

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Appellants,

vs.

W. R. GRACE & COMPANY, a Corporation,
Appellee.

Apostles.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

Filed

MAR 14 1916

F. D. Monckton,
Clerk.

No. 2750

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Appellants,

vs.

W. R. GRACE & COMPANY, a Corporation,
Appellee.

Apostles.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Libel for Demurrage	121
Answer	22
Answers of Witness Flindt to Interrogatories..	178
Answer to Amended Libel	132
Answer to Cross-libel	37
Answers of Witness Renny, to Direct, Cross and Redirect Interrogatories.	76
Answers of Witness Unruh to Interrogatories..	174
Assignment of Errors	150
Certificate of Clerk U. S. District Court as to Original Exhibits	230
Certificate of Clerk, United States District Court to Apostles on Appeal.....	228
Certificate of Commissioner to Deposition of L. F. Flindt	182
Certificate of Commissioner to Deposition of W. C. W. Renny	88
Certificate of Commissioner to Deposition of A. J. Stewart	102
Certificate of Commissioner to Deposition of F. K. R. Unruh	177
Commission to Consul-General, at Hamburg, Germany	165

Index.	Page
Commission to Notary Public at Victoria, B. C..	118
Cross-interrogatories to be Administered to	
A. J. Stewart et al.	111
Cross-libel	26
Decree Dismissing Cross-libelant's Libel.....	148
Decree, Final	147
DEPOSITIONS:	
FLINDT, LARS FRIEDREICH.....	178
STEWART, A. J.	92
UNRUH, FRITZ KARL RUDOLPH.....	174
Direct Interrogatories to be Administered to	
A. J. Stewart et al.....	105
Exception to Libel	20
Exceptions to Amended Libel for Demurrage..	127
EXHIBIT:	
Exhibit "A"—Attached to Depositions of	
W. C. W. Renny et al.	91
Exhibit "A" to Libel—Charter-party.....	12
Libelants' Exhibit No. 2—Charter-party..	157
Libelants' Exhibit "3"—Commission to	
Consul-General, at Hamburg, Germany	156
Libelants' Exhibit "4"—Letter Dated San	
Francisco, August 20, 1908 from W. R.	
Grace & Co. to L. T. Hengstler.....	183
Libelants' Exhibit "5"—Letter Dated	
March 23, 1907, from H. D. Hylton to	
Messrs. Bartlett & Co.....	191
Libelants' Exhibit "6"—Copy of Letter	
Dated March 19, 1907, from F. Flindt to	
Capt. C. W. Rennie.....	196

Index.

Page

EXHIBITS—Continued:

Libelants' Exhibit "7"—Power of Attorney from Martin Hermann, Adolph Elvers and Friedrich August Emil Zimmer to Louis T. Hengstler	197
Libelants' Exhibit "8"—Telegram	206
Respondent's Exhibit "A"—Letter Dated May 1, 1907, from H. D. Hylton to Messrs. Bartlett & Co.	209
Respondent's Exhibit "B"—Report of Crew Sailing Ship "Schwarzenbek"...	213
Respondent's Exhibit "C"—Letter Dated May 25, 1907, from Friedrich Flindt to Messrs. W. R. Grace & Co.	217
Respondent's Exhibit "D"—Letter Dated April 2, 1907, from W. P. Fowle to Capt. F. Flindt	222
Respondent's Exhibit "E"—Letter Dated March 19, 1907, from F. Flindt to Capt. C. W. Rennie.....	223
Final Decree	147
Interrogatories to be Propounded to Friederich Flindt, at Hamburg, Germany, on Libelants' Behalf	168
Interrogatories to be Propounded to F. Unruh, at Hamburg, Germany, on Libelants' Behalf	171
Libel for Demurrage	7
Libel for Demurrage, Amended.....	127
Minutes of Hearing—Tuesday, June 9, 1914...	120
Motion to Amend Libel, etc.	73

Index.	Page
Motion to Set Aside Order Staying Proceedings	33
Motion to Strike Out "Cross-libel".....	32
Notice of Appeal.....	149
Notice of Motion for Order Directing Respondents to Produce Certain Documents.....	40
Notice of Motion to Strike Exceptions from Record	129
Opinion and Order Sustaining Exceptions to Amended Libel	138
Order Concerning Exhibits in District Court...	224
Order Denying Motion to Dismiss Exceptions to Amended Libel and Denying Motion Overruling Exceptions Thereto, etc.	131
Order Denying Motion to Produce Certain Documents	42
Order Denying Motion to Set Aside Order Staying Proceedings, etc.	37
Order Extending Time to December 13, 1915, for Preparation of Apostles on Appeal...	225
Order Extending Time to January 14, 1916, for Preparation of Apostles on Appeal.....	226
Order Extending Time to February 14, 1916, for Preparation of Apostles on Appeal.....	227
Order Extending Time to February 24, 1916, for Preparation of Apostles on Appeal.....	228
Order for Issuance of Commission to Take Testimony	104
Order Overruling Exceptions to Libel	21
Order Setting Aside Order Submitting Motion to Strike Out Cross-libel, etc.	36

Index.	Page
Order Staying Proceedings	31
Order Submitting Motion to Strike Out Cross- Libel, etc.	35
Order Sustaining Exceptions to Amended Libel.	138
Praeipie for Apostles on Appeal.....	1
Proceedings Had as to Certain Offers in Evi- dence, etc.	56
Proceedings Had as to Certain Offers in Evi- dence, etc.	66
Proceedings Had Tuesday, June 9th, 1914.....	42
Redirect Interrogatories to be Administered to A. J. Stewart et al.	117
Statement of Clerk, U. S. District Court.....	2
Stipulation for Issuance of Commission to Take Testimony	103
Stipulation for Taking of Testimony of Fried- erich Flindt et al.	167
Stipulation for Withdrawal of Commission, Depositions, etc., for Taking of Testimony of W. C. W. Renny.....	89
Substitution of Attorneys.....	19
Sworn Statement of William P. Fowle, Dated June 10, 1907	71
Sworn Statement of W. P. Fowle, Dated June 28, 1907	68
TESTIMONY:	
FORD, EDWARD T.	64
HENGSTLER, L. T.	45
RENNY, W. C. W.	77
Testimony Taken in Open Court	42



*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALITY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Praeceptum for Apostles on Appeal

To the Clerk of the Above-entitled Court:

SIR: The libelants herein having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein, you are hereby requested to prepare and certify the apostles on appeal to be filed in said Appellate Court in due course; said apostles on appeal to be prepared in accordance with Rule 4 of the Rules in Admiralty of said Appellate Court, except that "Exhibit 1" of libelants, introduced in evidence at the hearing before the above-entitled court, shall be filed in the Appellate Court in its original form; and said apostles on appeal to include in their proper order and form the following papers and documents, to wit, All the matters prescribed and mentioned in Admiralty Rule No. 4 of said Appellate Court.

Dated: October 26, 1915.

ANDROS & HENGSTLER,

Proctors for Libelants and Appellants.

[Endorsed]: Filed Oct. 27, 1915. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified apostles.

Statement of Clerk, U. S. District Court.**PARTIES.**

Libelants: Martin H. A. Elvers and Frederic A. E. Zimmer (Copartners, doing business as Knohr & Burchard, Nfl.).

Respondent: W. R. Grace & Co., a corporation.

PROCTORS.

For the Libelant: Golder W. Bell, Esq., and Messrs. Andros & Hengstler, San Francisco.

For the Respondent: Messrs. Goodfellow & Eells, San Francisco (Original Attorneys).

Messrs. Frank & Mansfield, San Francisco (Substituted Attorneys).

Nathan H. Frank, Esq. and Irving H. Frank, Esq., San Francisco (Attorneys now acting). [2]

PROCEEDINGS.

1909.

February 18. Filed verified Libel for Demurrage, in the sum of \$2,964.72.

Filed appearance of respondent, W. R. Grace & Co., waiving service of process, and reserving 20 days within which to plead.

March 10. Filed Exceptions to Libel.

October 16. The Exceptions to the Libel, filed herein, this day came on for hearing, in the above-entitled court, before the Honorable John J. De Haven, Judge, and after hearing argument, the Court ordered that

said Exceptions stand submitted, on points to be filed.

November 17. The Exceptions to the Libel, heretofore submitted, were, by the Court, this day, ordered overruled.

December 6. Filed Answer of W. R. Grace & Co., a corporation, to Libel herein.

7. Filed Respondent's Cross-Libel.

9. Filed Order staying proceedings, until libelants shall have given bond, to respond in damages as claimed in said Cross-Libel, under provisions of the 53d Admiralty Rule. [3]

December 23. Filed Motion to Strike out Cross-Libel.

Filed Motion to set aside Order staying proceedings herein, until libelants furnish security in accordance with the 53d Admiralty Rule.

1910.

January 4. The Motion to Strike Out Cross-Libel and Motion to Set Aside Order Staying Proceedings, etc., this day came on for hearing, before the Honorable John J. De Haven, Judge, and after hearing argument, the Court ordered that said motions stand submitted to the Court for decision.

- April 27. The order heretofore entered herein, on January 4th, 1910, submitting the Motions to Strike Out Cross-Libel and to Set Aside Order Staying Proceedings, etc., was this day set aside, and the cause ordered restored to the calendar for reargument.
- May 6. The Motion to Set Aside Order Staying Proceedings, etc., this day came on for rehearing, before the Honorable John J. De Haven, Judge, and after argument, the Court ordered that said motion be denied.
- September 29. Filed Stipulation (bond) under Admiralty Rule 53.
- November 18. Filed depositions of F. Unruh and Friedrich Flindt, taken on behalf of libelant, before American Consulate-General, at Hamburg, Germany. [4]
- 1912.
- April 24. Filed Libelant's Answer to Cross-Libel.
- 1914.
- February 26. Filed Notice of Motion for Order directing respondent to produce certain documents.
28. The Motion for Order directing respondent to produce certain documents this day came on for hear-

ing before the Honorable John J. De Haven, Judge, and after hearing respective parties, the Court ordered said motion denied.

- | | | |
|-------|-----|---|
| March | 24. | Filed Deposition of A. J. Stewart, taken on behalf of respondent, before D. G. Marshall, Notary Public, at Vancouver, B. C. |
| June | 6. | Filed Deposition of W. C. W. Renny, taken on behalf of respondent, before N. W. Bolster, a Notary Public, at Seattle, Washington. |
| | 9. | This cause this day came on for hearing in the District Court of the United States for the Northern District of California, First Division, at San Francisco, before the Honorable M. T. Dooling, Judge, and after hearing, etc., the Court ordered the cause submitted. The Court further ordered that libelants be permitted to file an Amended Libel herein. |
| | 11. | Filed Amended Libel for Demurrage (\$3762.91). |
| July | 1. | Filed Exceptions to Amended Libel. |
| | 2. | Filed Notice of Motion to Strike Exceptions to Amended Libel from files. [5] |
| July | 11. | The Court this day ordered that the Motion to Strike Exceptions to |

Amended Libel from files, be denied. The oral motion of proctor for libelant, for order overruling said exceptions was likewise denied.

- | | | |
|----------|-----|---|
| August | 31. | Filed Answer to Amended Libel. |
| 1915. | | |
| May | 17. | Filed Opinion, in which it was ordered that the Exceptions to Amended Libel herein be sustained. |
| June | 3. | Filed Final Decree. |
| | 14. | Filed Decree Dismissing Respondent's Cross-Libel. |
| October | 13. | Filed Notice of Appeal. |
| | 22. | Filed Supersedeas Bond on Appeal, in the aggregate sum of \$450.00, with Massachusetts Bonding and Insurance Company as surety. |
| November | 1. | Filed one volume of testimony taken in open court. |
| 1916. | | |
| February | 23. | Filed Assignment of Errors. [6] |

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Libel for Demurrage.

To the Honorable JOHN J. DE HAVEN, Judge of
the United States District Court for the North-
ern District of California:

The LIBEL of Martin H. A. Elvers and Frederic
A. E. Zimmer against W. R. Grace & Co., for a cause
of contract, civil and maritime, alleges:

I.

That at all the times herein mentioned libelants
were and now are doing business in the City of Ham-
burg, Empire of Germany, as copartners under the
firm name and style of Knohr & Burchard, Nfl., and
were and now are the owners of the steel ship called
the "Schwarzenbek"; and that, at all of said times,
respondent was, and now is, as libelants are informed
and believe, a corporation organized and existing
under the laws of the State of Connecticut, and do-
ing business in the city of San Francisco, said North-
ern District of California.

II.

That on or about the 16th day of August, 1906, in

the City of London, England, the owners of said steel ship, Messrs. Knohr & Burchard, Nfl., libelants herein, by a written charter-party, chartered to respondent the said steel ship, in and by [7] which charter-party the whole of said ship was chartered unto said respondent for a voyage from a mill or loading place on Puget Sound, or in British Columbia not north of Burrard's Inlet, as might be directed by respondent, to Callao direct; and said respondent engaged by said charter-party to furnish the said vessel for said voyage a full cargo of sawn lumber and/or timber as therein specified. And it was further provided by said charter-party that orders as to loading mill should be given within 48 hours, Sundays and legal holidays excepted, after notification to charterers or their agents in San Francisco of arrival of vessel at Port Angeles, Port Townsend or Royal Roads, failing which lay days to count. And it was further provided by said charter-party that said respondent should be allowed for the loading of said vessel lay days as follows: Thirty (30) working lay days for loading (not to commence before 1st Feby., 1907, unless with characters' consent), to commence twenty-four hours after vessel is at loading place satisfactory to charterers, inward cargo and/or unnecessary ballast discharged and ready to receive cargo, master having given written notice to that effect. And it was further agreed by said charter-party that for each and every day's deduction by the fault of respondent or agents said respondent should pay to libelants demurrage at the rate of three pence sterling per register ton per day. That a true copy

of said charter-party is hereunto annexed, marked Exhibit "A," and made a part hereof.

III.

That thereafter, to wit, on or about the 2d day of March, 1907, said ship arrived at Royal Roads and her master gave notice to respondent charterers of her arrival thereat, and thereupon respondent ordered "Millside" as the loading mill under said charter-party. That said ship was at said designated loading [8] place, with her inward cargo and/or unnecessary ballast completely discharged, and was ready to receive her cargo under said charter-party, and her master gave written notice of said facts and said readiness on the 13th day of March, 1907; and that the lay days for the loading of the cargo of said ship, pursuant to the terms of said charter-party, should have begun on the 14th day of March, 1907, and should have ended on the 19th day of April, 1907.

IV.

That notwithstanding said libelants had performed all the conditions of said contract of charter-party, and said ship was ready to receive her cargo, and respondent had 24 hours' notice thereof, pursuant to the terms of said charter-party, and said ship then and there remained at the direction and disposal of said respondent, and notwithstanding there was no remissness nor fault on the part of said libelants, yet the said respondent, by its own default, did not load the said ship within the thirty working lay days in said charter-party agreed upon, but, contrary to the terms of said charter-party, said respondent delayed said ship until the 15th day of May, 1907, thereafter.

V.

That libelants, by the acts and defaults of respondent as aforesaid, became entitled to demand from respondent demurrage for twenty-six (26) days at the rate of 3d per registered ton per day, amounting to the sum of Two Thousand Nine Hundred and Sixty-four 72/100 Dollars (\$2,964.72), over and above all just deductions.

VI.

That on or about the said 15th day of May, 1907, the master of said ship, on the demand of charterers, but reserving the rights and claims of libelants on account of respondent's breach of the charter-party as aforesaid by duly made protest, issued [9] bills of lading to said charterers, to wit, respondent, wherein and whereby said respondent or assigns were mentioned as consignees of said cargo, but which said bills of lading contained no reference to the demurrage previously incurred. That said bills of lading are in the possession or under the control of respondent, and out of the possession and control of these libelants, and that libelants pray for the production, by respondent, of the original bill of lading for greater certainty in the premises.

VII.

That notwithstanding respondent has been requested to pay the said sum of \$2,974.72, the demurrage aforesaid, respondent has refused and still refuses to pay the same or any part thereof.

VIII.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the

United States and to this Honorable Court.

WHEREFORE, libelants pray that a *or* citation, according to the practice of this Honorable Court in admiralty and maritime cases, may issue against the said respondent, and that it be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of the demurrage aforesaid with costs, and that the libelants may have such other and further relief in the premises as in law and justice they are entitled to receive.

ANDROS & HENGSTLER,
Proctors for Libelants. [10]

Northern District of California,—ss.

Louis T. Hengstler, after being duly sworn, deposes: I am the proctor for libelants. Libelants in this cause are absent from this District, as deponent is informed and believes, to wit, in Hamburg, Germany. That the source of deponent's knowledge is documents and information derived from libelants, and that deponent verily believes the facts in this libel stated to be true.

LOUIS T. HENGSTLER.

Subscribed and sworn to before me this 18th day of February, 1909.

[Seal]

JOHN FOUGA,
Deputy Clerk U. S. District Court, Northern District
of California. [11]

[Exhibit "A" to Libel.]

"EXHIBIT A."

LUMBER.

1 THIS CHARTER PARTY, made and concluded upon in the City of London this 16th day of August one thousand nine hundred and Six BETWEEN MESSRS. KNOHR & BURCHARD NFL. for and on behalf of the owners of the Steel ship called the "SCHWARZENBEK," of the burden of 1877 tons or thereabouts, register measurement, now on passage to Santa Rosalia of the first part, and MESSRS. W. R. GRACE & CO. San Francisco of the second part,

10 WITNESSETH, that the said party of the first part, in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, does covenant and agree on the freighting and chartering of the whole of the said vessel unto the said party of the second part, for a voyage from a Mill or loading place on PUGET SOUND, or in British Columbia not north of Burrard's Inlet, as may be directed by Charterers, to

Callao direct

~~or to a direct port within said range, at Charters' option, orders to be given on signing Bills of Lading.~~ Charterers to have the privilege of loading vessel at two Mills, but same must be in the same country, they paying the extra cost of towage, if any, and time used in so moving to count as lay days.

20 The said vessel shall be kept tight, staunch, strong and every way fitted for such a voyage,

and receive on board for the aforesaid voyage, the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from said parties of the second part, or their agents.

23 The said party of the second part do engage to furnish the said vessel for the voyage aforesaid, a full cargo of SAWN LUMBER and/or TIMBER of such lengths and sizes as can be taken through vessel's hatchways ~~(and bow and stern ports, if any)~~. Lengths not shorter than sixteen feet, except at Charterer's option. No lumber to be cut by ship without written authority from the Charterers.

26 Vessel to have the privilege of loading a deck-load, not endangering safety of the cargo, paying the extra insurance on same. Cargo on deck to consist of the largest sizes of rough lumber unless otherwise directed by Charterers.

28 Broken stowage, if required, to be furnished by Charterers, ~~at their option~~, in lengths not shorter than twelve feet, paying half freight thereon, ~~failing which owners to have the privilege of loading same on ship's account.~~

30 Orders as to loading Mill to be given within forty-eight hours, Sundays and legal Holidays excepted, after notification to Charterers or their Agents in San Francisco of arrival of vessel at Port Angeles, Port Townsend or Royal Roads, failing which lay days to count.

32 In case of fire or accident at the Mill where vessel is ordered to load, Charterers to have the privilege of ordering the vessel to another Mill

on Puget Sound or in British Columbia, pay the additional towage incurred, but lay days not to count during time occupied in moving.

34 The said party of the second part agrees to pay to said party of the first part, or Agents, for the charter or freight of said vessel during the voyage aforesaid, in the manner following, that is to say:

Fifty Shillings (50)

for each thousand feet, board measure, delivered. If ordered to a direct port of discharge or if cargo be all discharged at port of call, the freight to be two shillings and six pence less per thousand feet.

43 Freight payable on the right and full delivery of cargo at final port of discharge, in good and approved Bills of Exchange on London at 90 days sight, or in cash at current rate of exchange, at Charterer's option.

45. If discharge is required at more than one port sufficient cargo is to be left on board to enable the vessel to shift with safety, and vessel is not to be ordered to a port south.

52 Said party of the second part shall be allowed for the loading and discharging of said vessel at the respective ports aforesaid, lay days as follows: Thirty (30) working lay days for loading, not to commence before 1st Feby 1907 unless with Charterer's consent, to commence twenty-four [12] hours after vessel is at loading place satisfactory to Charterers, inward cargo and/or unnecessary ballast discharged and ready to receive cargo; Master having given written notice to that effect. Discharge to be given with dispatch according to the

custom of the port of discharge at such safe wharf, dock or place as Charterers may direct, but at not less than 35,000 feet B. M. per day. For each and every day's detention by the fault of party of the second part or agents, they agree to pay to the said party of the first part demurrage at the rate of three pence sterling per register ton per day. Should the vessel be detained by the Master beyond the time herein specified, demurrage shall be paid to Charterers at the same rate and in the same manner. Cargo shall be received and delivered within reach of vessel's tackles where she can lie afloat.

60 Three days to be allowed Charterers' Agents for giving discharging orders at Port of Call.

61 Vessel to furnish, within five days after arrival at loading place, as ordered, a certificate from a Marine Surveyor of the San Francisco Board of Underwriters, that she is in proper condition for the voyage, and a further certificate in due course, that she is properly loaded. Should vessel fail to pass satisfactory survey and should she be detained more than ten days for repairs, to enable her to pass such survey, this charter to be void at Charterers' option, such option to be declared at the end of said ten days.

67 General Average, if any, as per York-Antwerp rules, 1890.

68 Cargo to be stowed under the Master's supervision and direction; Charterers' stevedore to be employed at ~~current rates~~ not exceeding \$1.10.

69 Bills of Lading to be signed for pieces with the clause—"All on board to be delivered," and

at any rate of freight shippers may desire without prejudice to this Charter; but if at a lower rate than provided in Charter, difference to be paid in cash at port of loading, less commission, interest and insurance.

72 (Act of God, perils of the sea, fire, barratry of the master and crew, enemies, pirates, assailing thieves, arrest and restraint of princes, rulers and people, collisions, strandings and other accidents of navigation, even when occasioned by the negligence, default or error of judgment of the pilot, master, mariners, or other servants of the ship-owner, civil commotions, floods, frosts, storms, fire, strikes, lock-outs and stoppages (partial or otherwise) or accident at the mill, or on railways or docks; or strikes, lock-outs or stoppages (partial or otherwise) or any other hindrances or delays of whatsoever nature connected with the working, delivery or shipment of the cargo or any part thereof beyond the Charterers' or agents' control throughout the charter always excepted.)

78 Vessel to have a lien on cargo, for all freight, dead freight and demurrage, it being understood that all and any liability of the Charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions, whether of demurrage or otherwise, to be settled with the Consignees, the Owners and Captain looking to their lien on the cargo for this purpose.

81 Should the vessel be compelled to put into any part or ports, the Master shall consign her

to Charterers or their correspondents, paying them the usual commissions.

83 A sufficient amount for ship's ordinary disbursements at port of loading, say not exceeding — pounds sterling to be advanced by Charterers' on account of freight under this Charter Party, subject to a charge of — per cent, to cover interest, insurance and commission; advance to be endorsed on Captain's copy of Charter Party and all the Bills of Lading.

87 A commission of ~~five~~ $3\frac{3}{4}$ per cent, on estimated amount of this Charter is due and payable to Messrs. W. R. Grace & Co. San Francisco on completion of loading, ~~or should be lost~~. Exchange at \$4.86 per £ sterling.

89 Vessel to be consigned to Charterers' agents at port of discharge inwards only, paying them a commission of two and one-half per cent, on amount of freight under this Charter and usual agency not exceeding five guineas for transacting vessel's inward business. At Charterers' option the above commission of ~~seven~~ six and ~~one half~~ quarter per cent is payable at port of lading. [13]

92 Vessel to be consigned outward to Charterers' agent on Puget Sound or in British Columbia, and inwards if in ballast, free of commission, paying them the usual fee for doing Custom House business, not to exceed twenty-five dollars. Vessel to clear at the Custom House in the name of Charterers.

94 In case the vessel does not arrive at Port of Call, or Mill as ordered by Charterers, on or be-

fore sundown of 31st March 1907 the Charterers are to have the option of cancelling or maintaining this Charter; said option to be declared within forty-eight hours after arrival of vessel at Port of Call or Mill as above.

97 To the true and faithful performance of all the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators and assigns, and also the said vessel, freight, tackle and appurtenances and the merchandise to be laden on board, each to the other, in the penal sum of amount of Charter.

IN WITNESS WHEREOF, we hereunto set our hands, the day and year first above written.

Signed in the Presence of Darsena Dues on cargo at Callao to be paid by Receivers there.

Signed in the presence of Messrs. W. R. GRACE & CO., San Francisco.

By Authority of Owners,
HOWARD HOULDER & PARTNERS, LTD.,
(S.) HOWARD HOULDER,
Director,
As Agents.

GRACE BROS. & CO., LTD.,
(S.) J. P. EYRE,

Managing Director As Agents, 16-8-06.

To the Clerk of the Court:

Please withhold citation.

ANDROS & HENGSTLER,
Proctors for Libelants.

[Endorsed]: Feb. 18, 1909. Jas. P. Brown, Clerk.
By John Fouga, Deputy Clerk. [14]

*In the District Court of the United States, in and for
the Northern District of California.*

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO.,

Respondents.

(Substitution of Attorneys.)

We hereby consent to the substitution of Messrs.
Frank & Mansfield, as proctors for the respondents in the above-entitled cause, in our place and stead.

Dated, March 10th, 1909.

GOODFELLOW & EELLS.

[Endorsed]: Filed Mar. 10, 1909. Jas P. Brown,
Clerk. By John Fouga, Deputy Clerk. [15]

*In the District Court of the United States, in and for
the Northern District of California.*

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO.,

Respondents.

(Exception to Libel.)

To the Hon. JOHN J. DE HAVEN, Judge of the District Court of the United States, in and for the Northern District of California:

THE EXCEPTIONS of W. R. Grace & Co., to the Libel of Martin H. A. Elvers and Frederic A. E. Zimmer vs. W. R. Grace & Co., in a cause of contract, civil and maritime, alleges:

I.

That the charter-party provides that the bills of lading should be signed "without prejudice to this charter-party," and that said vessel should have "a lien on the cargo for demurrage, it being understood that all and any liability of the charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions of demurrage or otherwise to be settled with the consignees, the owners and captain looking to their lien on the cargo for this purpose."

That by reason of the foregoing the said libel does not state a cause of action against these respondents.

II.

That it is not alleged in said libel that the said alleged failure to load the said vessel within the time in said charter-party provided, was occasioned by the fault of the said respondents, or their agents.

[16]

WHEREFORE, these respondents pray that said libel may be dismissed, and for their costs herein.

FRANK and MANSFIELD,

Proctors for Respondents.

[Endorsed]: Exceptions overruled—Respondents to have ten days to answer.

Nov. 17, 1909.

JOHN J. DE HAVEN,
Judge.

Filed Mar. 10, 1909. Jas. P. Brown, Clerk. By John Fougá, Deputy Clerk. [17]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 17th day of November, in the year of our Lord, one thousand nine hundred and nine. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 13,980.

MARTIN H. A. ELVERS et al, .

vs.

W. R. GRACE & CO., etc.

(Order Overruling Exceptions to Libel.)

The exceptions to the libel herein having been heretofore submitted to the court for decision, now after due consideration had thereon, by the Court ordered that said exceptions be, and the same are hereby overruled. Further ordered that respondent herein be, and it is hereby allowed ten days in which to answer said libel. [18]

[Answer.]

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY.

MARTIN A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

To the Hon. JOHN J. DE HAVEN, Judge of the
District Court of the United States, in and for
the Northern District of California.

THE ANSWER of W. R. Grace & Co., a corporation, respondent, to the libel of Martin A. Elvers and Frederic A. E. Zimmer vs. W. R. Grace & Co. and to all persons lawfully intervening for their interests herein, in a cause of contract, civil and maritime, alleges:

Answering unto the first article in said libel, and particularly unto the allegation therein that the said libelants were and are doing business in the city of Hamburg, in the Empire of Germany, as copartners under the firm name of Knohr & Burchard, *Mfl.*, and were, and now are, the owners of the steamship called the "Schwarzenbek," this respondent is ignorant, so that it can neither admit nor deny the same, wherefore on that ground, it calls for proof thereof.

II.

Answering unto the third article in said libel, this respondent denies that the said steamship was at the said designated loading place in said libel mentioned, or at any designated loading place with her inward cargo and unnecessary ballast completely discharged, or that said vessel was ready to receive her cargo under the said charter-party on the 13th day of March, 1907, or at any time or at all before the 22d day of March, 1907. [19]

Further answering this respondent denies that said master gave written notice of his readiness to receive cargo under said charter-party on the 13th day of March, 1907, but admits that he did give said notice on the 21st day of March, 1907; and said respondent further alleges that at the time of giving said notice said vessel was not rigged for taking in lumber and was not prepared to take in lumber until the 22d day of March, 1907.

Respondent further denies that lay days for the loading of the cargo of said ship pursuant to the terms of the charter-party should have begun on the 14th day of March, 1907, or should have ended on the 19th day of April, 1907; on the contrary, said respondent alleges that the lay days for loading said cargo pursuant to the terms of said charter-party should and did begin on the 23d day of March, 1907, and should and did end on the 17th day of May, 1907.

III.

Answering unto the fourth article in said libel, this respondent denies that said libelants had performed all of the conditions in said contract of charter-

party, and further denies that said ship was ready to receive her cargo or that the respondent had 24 hours' notice thereof pursuant to the terms of said charter party, except as last hereinbefore alleged. Said respondent further denies that said ship then and there remained at the direction or disposal of said respondent, but alleges that on the 1st day of April, 1907, the master of said vessel of his own motion, and without cause, did stop, cease and discontinue the further loading of said vessel, and refused to accept any delivery of cargo, and continued so to refuse up to and until the afternoon of the 3d of April, 1907, whereby three days were lost to said respondent in the loading of said vessel. Said respondent further alleges that on March 29th and April 1st were respectively [20] holidays at said loading port, and were not working lay days for loading.

Respondent further alleges that on the 23d day of April, 1907, the stevedores' crew engaged in the loading of said ship combined in a strike and ceased work, and did coerce and intimidate other workmen from assisting in the loading of said vessel, and that said strike continued until the 11th day of May, 1907, on which day said stevedore crew again commenced to work and completed the loading of said vessel on the 15th day of May, 1907. That under the terms of said charter-party the said lay days would have expired on the 17th day of May, 1907, and not otherwise.

Further answering unto said article, this respondent denies that there was no remissness or fault on

the part of the libelants, and they further deny that said respondent by its own default did not load the ship within 30 working lay days in said charter-party agreed upon, or that contrary to the terms of said charter-party, or otherwise, or at all, said respondent delayed the said ship until said 15th day of May, 1907, or otherwise or at all delayed said ship.

IV.

Answering unto the fifth article in said libel, this respondent denies that by the acts or defaults of respondent, or otherwise, or at all, the said libelants became entitled to demand from said respondent demurrage for 26 days, or for any other time whatsoever, at the rate of 3 pence sterling per registered ton per day, or at any rate whatsoever, amounting to the sum of Two Thousand Nine Hundred and Sixty-four and $73/100$ (2,964.73) Dollars over and above all just deductions, or amounting to any sum of money whatsoever, or at all.

V.

Further answering unto said libel, and particularly unto [21] the eighth article thereof, this respondent denies that all or singular the premises are true, but admits that the same are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, said respondent prays that said libel be dismissed and for its costs herein.

W. R. GRACE & CO.,

GALE H. CARTER,

Sub-Manager.

FRANK & MANSFIELD,

Proctors for Respondent.

United States of America,
Northern District of California,—ss.

Gale H. Carter, being duly sworn, deposes and says: That he is an officer of W. R. Grace & Co., a corporation, respondent in the above-entitled cause, to wit, the sub-manager thereof; that he has read the foregoing Answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

GALE H. CARTER.

Subscribed and sworn to before me this 6th day of December, 1909.

[Seal] CHARLES EDELMAN,
Notary Public in and for the City and County of San
Francisco, State of California.

[Endorsed]: Filed Dec. 6, 1909. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [22]

[Cross-libel.]

*In the Distrit Court of the United States, in and for
the Northern District of California.*

MARTIN A. ELVERS and FREDERIC A. E. ZIM-
MER,

Libelants,

VS

W. R. GRACE & CO., a Corporation,
Respondent.

To the Hon. JOHN J. DE HAVEN, Judge of the District Court of the United States, in and for the Northern District of California :

The Cross-libel of W. R. Grace & Co., a corporation, to the libel of Martin A. Elvers and Frederic A. E. Zimmer, and to all persons lawfully intervening for their interests therein, in a cause of contract, civil and maritime, alleges :

I.

That at all of the times hereinafter mentioned the said W. R. Grace & Co. was, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Connecticut, and doing business in the City and County of San Francisco, in the Northern District of California.

II.

That on the 16th day of August, 1906, the said cross-libelant entered into a contract of charter-party with Messrs. Knohr & Burchard, Mfl., wherein and whereby the said cross-libelant chartered the ship "Swarzenbek," a vessel of 1877 tons, or thereabouts, registered measurement, for a voyage from a mill or loading place on Puget Sound or in British Columbia not North of Bird's Inlet as may be directed by charterer, to Callao, direct. That it [23] was among other things in and by said charter-party provided that the said charterer should be allowed for loading, 30 working lay days, to commence 24 hours after the vessel is at loading place satisfactory to charterers, inward cargo and unnecessary ballast discharged, and ready to receive cargo, master having given written notice to that effect. That for each and

every day's detention by the fault of said charterers, they agree to pay to the said owners demurrage at the rate of 3 pence sterling per registered ton per day. Should the vessel be detained by the master beyond the time in said charter-party specified, demurrage shall be paid to charterers at the same rate and in the same manner, cargo to be received and delivered within reach of ship's tackle, where she can lie afloat.

III.

That thereafter, to wit, on the 23d day of March, 1907, the said vessel was alongside the wharf, as directed by said charterers, and ready to begin the loading of said cargo in accordance with the terms of said charter-party.

IV.

That thereafter, notwithstanding that the said cross-libelant has performed all the terms and conditions in said charter-party on its part to be performed, nevertheless the master of said vessel detained the same in the lading thereof, beyond the time in said charter-party provided, by refusing to accept and receive cargo delivered by said cross-libelant within reach of vessel's tackle, for the period of three days.

V.

That said cross-libelant, by reason of said acts and default on the part of the master of said vessel, as aforesaid, became entitled to demand from said owners, demurrage for said 3 days at the rate of 3 pence sterling per registered ton per day, amounting in all to Three Hundred and Six and 86/100 (306.86) [24] Dollars, over and above all just deductions.

That no part thereof has been paid, but the entire amount, together with the interest, remains due and owing from said owners to this cross-libelant.

VI.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, said cross-libelant prays that said libelants may be cited to appear and answer to said cross-libel and give security in the usual amount and form to respond in damages as claimed in said cross-libel, and that all proceedings upon the original libel be stayed until such security shall be given; and that they be further required to answer on oath this cross-libel and the matters therein contained, and that this Honorable Court will be pleased to decree to the cross-libelant the payment of the amount which shall be due to it, with interest and costs, and that it have such other and further relief as in law and justice it may be entitled to receive.

W. R. GRACE & CO.,
By GALE H. CARTER,
Sub-Manager.

NATHAN H. FRANK,
Proctor for Cross-libelant.
FRANK & MANSFIELD,
Counsel. [25]

State of California,
City and County of San Francisco,—ss.

Gale H. Carter, being duly sworn, deposes and says: That he is an officer of W. R. Grace & Co., a Corporation, Cross-libelant in the above-entitled cause, to wit,

the sub-manager thereof; that he has read the foregoing Cross-libel, and knows the contents thereof, and that the same is true as he verily believes.

GALE H. CARTER,

Subscribed and sworn to before me this 7th day of December, 1909.

[Seal]

CHARLES EDELMAN,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires April 9, 1910.

Receipt of a copy of the within Cross-libel is hereby acknowledged this 7th day of December, 1909, reserving all rights.

ANDROS & HENGSTLER,

Proctor for Libelants.

[Endorsed]: Filed Dec. 7, 1909. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [26]

In the District Court of the United States, in and for the Northern District of California.

IN ADMIRALTY—No. 13,980.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the courtroom in the Post-office Building in the City and County of San Francisco, on Thursday, the 9th day of December, in the year of our Lord one thousand nine hundred and nine. Present: The Honorable JOHN J. DE HAVEN, District Judge.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

(Order Staying Proceedings.)

It appearing that the respondent in the above-entitled cause has filed a Cross-libel therein;

NOW, THEREFORE, IT IS HEREBY ORDERED that all proceedings in the above-entitled cause be, and the same hereby are, stayed until the above-named libelants shall have given security in the usual amount and form to respond in damages as claimed in said Cross-libel in accordance with the provisions of the 53d Admiralty Rule.

December 9, 1909.

JOHN J. DE HAVEN,

Judge.

[Endorsed:] Filed Dec. 9, 1909. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [27]

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY—No. 13,980.

MARTIN A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Motion to Strike Out "Cross-Libel."

Please take notice that on Tuesday, the 28th day of December, A. D. 1909, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, libelants in the above-entitled cause will move the Court, at the courtroom thereof, to strike from the records and files of said action the alleged "Cross-libel" filed herein by respondent on the 7th day of December, A. D. 1909, on the grounds:

First. That said alleged "Cross-libel" was not filed within the time allowed by law or the rules of the Court;

Second. That no process has been issued nor served upon libelants in this action.

And at the same time and place, and on the same grounds, libelants will move the Court to set aside all orders made and based upon said alleged "Cross-libel," and in particular the ex parte order made on the 9th day of December, A. D. 1909, ordering that all proceedings in the above-entitled cause be stayed until libelants shall have given security in accordance with the provisions of the 53d Admiralty Rule.

This motion will be made on the records and files of this action.

ANDROS & HENGSTLER,

Proctors for Libelants.

To the Respondent herein and

Messrs. FRANK & MANSFIELD,

Its Proctors.

Receipt of a copy of the within is hereby admitted this 23d day of December, 1909.

FRANK & MANSFIELD.

[Endorsed]: Filed Dec. 23, 1909. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [28]

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY—No. 13,980.

MARTIN A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

W. R. GRACE & CO., a Corporation,

Respondent.

Motion to Set Aside Order (Staying Proceedings).

Please take notice that, in the event that the motion (of which previous notice has been given) to strike the "Cross-libel" filed herein from the files of the above-entitled cause, be denied, libelants in the above-entitled cause will, on Tuesday, the 28th day of December, A. D. 1909, immediately after said last-mentioned motion has been heard, or as soon thereafter as counsel may be heard, at the courtroom of said court, move the Court to set aside the order of the Court made on the 9th day of December, A. D. 1909, ordering that all proceedings in the above-entitled cause be stayed until the above-named libelants shall have given security in the usual amount and form to respond in damages as claimed in said alleged "Cross-libel" in accordance with the provisions of the 53d Admiralty Rule.

Said motion will be made on the ground that, assuming that a Cross-libel is properly before the Court in this action, the said Cross-libel does not state a

counterclaim arising out of the same cause of action for which the original libel was filed or any counterclaim whatever; and on the further ground that it appears from the records and files herein that the demurrage claimed in said Cross-libel is not the proper amount of demurrage, assuming that any demurrage is due to respondent; and on the further ground that said alleged Cross-libel does not [29] state facts sufficient and is too uncertain and indistinct to constitute a cause of Cross-libel; and on the further ground that the facts appearing in the record show that the 53d rule in Admiralty does not apply to the said Cross-libel or the present action.

This motion will be made on the records and files of this action.

ANDROS & HENGSTLER,
Proctors for Libelants.

To the Respondent herein and
Messrs. FRANK & MANSFIELD,
Its Proctors.

Receipt of a copy of the within is hereby admitted this 23d day of December, 1909.

FRANK & MANSFIELD.

[Endorsed]: Filed Dec. 23, 1909. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [30]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 4th day of January, in the year of our Lord, one thousand nine hundred and ten. Present: The Honorable JOHN J. DE HAVEN, Judge.

#13,980.

MARTIN H. A. ELVERS et al.,

vs.

W. R. GRACE & CO., etc.

**(Order Submitting Motion to Strike Out Cross-Libel,
etc.)**

The motions herein to strike out the Cross-libel now on file and for an order setting aside and vacating the order heretofore made on December 9, 1909, staying all proceedings in accordance with the provisions of the 53d Admiralty Rule, this day came on for hearing, Louis T. Hengstler, Esqr., appearing for and Nathan H. Frank, Esqr., against said motions, and after hearing proctors, by the Court ordered that said motions be, and they are hereby submitted to the Court for decision. [31]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 27th day of April, in the year of our Lord, one thousand nine hundred and ten. Present: The Honorable JOHN J. DE HAVEN, Judge.

#13,980.

MARTIN H. ELVERS et al.

vs.

W. R. GRACE & CO., etc.

(Order Setting Aside Order Submitting Motion to Strike Out Cross-Libel, etc.)

In each of the above-entitled cases by the Court ordered that the orders heretofore made therein submitting said cases to the Court for decision be, and the same are hereby set aside and vacated. Further ordered that each of said cases be, and the same is hereby restored to the calendar for re-argument.

[32]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 6th day of May, in the year of our Lord, one thousand, nine hundred and ten. Present: The Honorable GEORGE DENWORTH, Judge.

#13,980.

MARTIN H. A. ELVERS et al.

vs.

W. R. GRACE & CO., etc.

(Order Denying Motion to Set Aside Order Staying Proceedings, etc.)

The motion for an order setting aside the order staying proceedings herein on Dec. 9, 1909, ordering that all proceedings be stayed until the libelants shall have given security in accordance with the provisions of the 53d Admiralty Rule, this day came on for hearing, Louis T. Hengstler, appearing as proctor for libelants, and Nathan H. Frank, as proctor for respondent, and after hearing argument, by the Court ordered that said motion be, and the same is hereby DENIED. [33]

[Answer to Cross-Libel.]

*In the District Court of the United States, in and for
the Northern District of California.*

No 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO, a Corporation,

Respondent.

THE ANSWER TO THE CROSS-LIBEL of respondent, in an alleged cause of contract, civil and maritime, alleged:

I.

Admits the allegations in Article I of said cross-libel.

II.

Admits the allegations in Article II of said cross-libel.

III.

Admits that, on the 23d day of March, 1907, the said vessel was alongside the wharf, as directed by said charterers, and on this behalf alleges that she was alongside said wharf, as directed by said charterers, at all times from and after six o'clock P. M. of the 12th day of March, 1907; denies that she was ready to begin the loading of said cargo in accordance with the terms of said charter-party on said 23d day of March, 1907, and on this behalf alleges that she was ready to begin the loading of said cargo, in accordance with the terms of said charter-party, at six o'clock P. M. of the 12th day of March, 1907.

IV.

Denies that said cross-libelant has performed all the terms or conditions in said charter-party on its part to be performed; denies that the master of said vessel detained the same in the lading thereof beyond the time in said charter-party provided or for the period of three days or for any other period of time. [34] Denies that said master refused at any time to accept or receive cargo delivered by cross-libelant in accordance with the terms of said charter-party.

V.

Denies that said cross-libelant, by reason of the

alleged or any acts or default on the part of the master of said vessel, became entitled to demand from said owners demurrage for any period of time or at any rate or in any amount whatever. Denies that the amount in said article alleged, or any interest, remains or is due or owing from said owners to this cross-libelant.

VI.

Denies that all or singular the premises in Article VI of the cross-libel referred to are true, except as herein admitted.

WHEREFORE Libelants herein pray that said cross-libel be dismissed, and for their costs herein.

ANDROS & HENGSTLER,

Proctors for Libelant.

Verification of the foregoing answer to cross-libel is hereby waived.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Libelant.

[Endorsed]: Filed Apr. 24, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [35]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY.—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO, a Corporation,

Respondent.

**(Notice of Motion for Order Directing Respondents
to Produce Certain Documents.)**

To W. R. Grace & Co., Respondent herein, and Messrs.

Nathan H. Frank and Irving H. Frank, Its
Proctors:

Please take notice that on Saturday, the 28th day of February, 1914, at ten o'clock A. M., or as soon thereafter as counsel may be heard, libelants will move the above-entitled court for an order directing respondent, its agents and representatives, to produce any and all documents in respondent's possession or control relating to any question in issue in this case, and in particular the correspondence and all wires exchanged between respondent and the loading mill at which the German ship "Schwarzenbek" was loaded in March, April and May, 1907, under the charter-party involved in the above-entitled cause, also all the correspondence and wires exchanged between respondent and Captain Frederick Flindt of said German ship, also all the correspondence and

wires exchanged between said loading mill and said Captain Flindt, also all the correspondence and wires between the respondent and the stevedores who loaded said ship. Said application will be made to produce said documents, for the inspection of proctors for libelants, at a time and place convenient to respondent and said proctors, and not later than Friday, the 6th day of March, 1914, so as to enable libelants to prepare for the hearing of said cause, now set for March 9, 1914.

ANDROS & HENGSTLER,

Proctors for Libelants.

Dated San Francisco, Cal., February 24, 1914.

Receipt of a copy of the within notice of motion is hereby admitted this 24th day of February, 1914.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent.

[Endorsed]: Filed Feb. 26, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [36]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 4th day of January, in the year of our Lord, one thousand, nine hundred and ten. Present: The Honorable M. T. DOOLING, Judge.

No 13,980.

ELVERS et al.

vs.

W. R. GRACE & CO.

(Order Denying Motion to Produce Certain Documents.)

The motion for an order to produce documents herein this day came on for hearing, and after hearing respective proctors, by the Court ordered that said motion be, and the same is hereby denied. [37]

(Testimony Taken in Open Court.)

In the District Court of the United States for the Northern District of California, First Division.

No 13,980.

Honorable MAURICE T. DOOLING, Judge.
MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO, a Corporation.

Respondent.

[Proceedings Had Tuesday, June 9th, 1914.]

Tuesday, June 9th, 1914.

COUNSEL APPEARING:

For the Libelants: L. T. HENGSTLER, Esq.,
and GOLDEN BELL, Esq.

For the Respondent: NATHAN H. FRANK,
Esq., and IRVING H. FRANK, Esq.

Mr. BELL.—I wish to introduce in evidence, first,

as an exhibit, a map showing the location of Royal Roads, and the approximate location of Millside. It will be for the convenience of the Court, so that the Court will be familiar with the territory involved. I will show it to you, Mr. Frank.

Mr. FRANK.—That is all right. Of course, we object to it as immaterial and irrelevant. It is an ordinary chart.

(The map was here marked “Libelants’ Exhibit 1.”)

Mr. BELL.—I also wish to introduce the original charter-party in this action. I will let you inspect this, Mr. Frank.

Mr. FRANK.—If you say that is the document, that is all right.

Mr. BELL.—I ask that that be marked “Libelants’ Exhibit 2.” (The document was here marked Libelants’ Exhibit 2.”)

I wish to introduce in evidence the deposition of Friedrich Flindt, the Master of the “Schwarzenbek.” That deposition consists [38] of only a couple of pages. I think it would be better to read it so that your Honor may have the issues clearly before you as we proceed. (Reads.)

I also offer the deposition of Fritz Karl Rudolph Unruh. I offer these depositions in evidence on behalf of the libelants and ask that they be marked “Libelants’ Exhibit 3.”

(The documents were marked “Libelants’ Exhibit 3.”)

Now, with reference to the correspondence, notices,

and so forth, which took place between the shippers, the charterers and their agents, we have made demand upon Mr. Frank for various documents specifically and also a general demand. If there is no objection to these documents, Mr. Frank, suppose we stipulate what the facts are.

Mr. FRANK.—I know of no documents myself except those which you had in your possession for two years or more and that I got from you yesterday; outside of those I know of no documents. You gave me your notice to produce and I passed it on to the respondent and that is all they found, the documents that were in your possession.

Mr. BELL.—Those were given to us upon the recommendation of their former counsel, the counsel who represented them before you were substituted, Mr. Frank; as to those documents, Mr. Frank, is there any dispute, as to those that I specifically mentioned?

Mr. FRANK.—How do you mean?

Mr. BELL.—I mean as to the authenticity of these telegrams, for instance.

Mr. FRANK.—I know nothing about them. You will have to treat them for what they are worth. I know nothing about them.

Mr. BELL.—Not even the telegrams?

Mr. FRANK.—I know nothing about the telegrams.

Mr. BELL.—Or the copies of the telegrams? [39]

Mr. FRANK.—I know nothing about them.

Mr. BELL.—Then I will have to call Mr. Hengstler as a witness on that matter, unless we can agree on it.

Mr. FRANK.—You can make your proof in the regular way.

Mr. HENGSTLER.—You had that correspondence for years, Mr. Frank, and you know about them as well as I do.

Mr. FRANK.—Well, I say that I never saw that correspondence until yesterday and I didn't know where to look for it until I got them from you yesterday; let us not have any personalities about this matter.

[Testimony of L. T. Hengstler, for Libelants.]

Mr. L. T. HENGSTLER, called for the libelants, sworn.

Mr. BELL.—I will show you these documents, Mr. Frank.

Mr. FRANK.—Your Honor will pardon me for taking so much time in looking over these documents; I have never seen this part of them at all.

Mr. BELL.—Q. Mr. Hengstler, I hand you a letter with certain documents attached and ask you what that letter is and what those documents are and how they came into your possession.

Mr. FRANK.—What the letter is and what those documents are speak for themselves; of course, the letter is a typewritten letter, it bears no signature—that is, I mean it bears no written signature; it is a typewritten signature. How they came into his possession would be perfectly competent, but otherwise I object to the question.

Mr. BELL.—I withdraw that question.

Q. Mr. Hengstler, how did these documents come into your possession?

(Testimony of L. T. Hengstler.)

A. When this matter was first placed in my hands by the German Consulate-General on behalf of the firm of Knohr & Burchard of Hamburg, Germany, I communicated with Messrs. W. R. Grace & Company and [40] they referred me to their counsel, Messrs. Goodfellow and Eells of this city. I called at the office of those gentlemen and was told that Mr. Eells had charge of the matter for W. R. Grace & Company, and I talked the facts over with Mr. Eells and Mr. Eells told me that he would instruct W. R. Grace & Company to tell me what correspondence and what telegrams were exchanged between the Captain and W. R. Grace & Company, and asked me to call at the office of W. R. Grace & Company, and I called there and they gave me these copies of telegrams which were exchanged between the Captain of the German ship "Schwarzenbek" and their office and their stevedores and told me that that was the correspondence that passed between them as far as they then had it. Later I got another list of telegrams, and the new list contained some which they afterwards must have obtained because it contained some additional telegrams; they at that time freely told me all the facts and showed me the correspondence and all the documentary evidence in their possession.

Mr. FRANK.—I think that is immaterial, your Honor. The question is how these came into his possession.

Mr. BELL.—Q. Are these the documents that came

(Testimony of L. T. Hengstler.)

into your possession in the way that you have explained?

A. Yes, with the exception that I made a memorandum on the first document, the letter signed W. R. Grace & Company; true it is signed in typewriting, but I received it from them together with these documents; I made a memorandum on it in pencil. That memorandum was made by myself; it did not come from the other side; it is in reference to a bond.

Q. Refreshing your recollection from those documents, Mr. Hengstler, will you say what correspondence was exchanged between W. R. Grace & Company, the Captain of the ship "Schwarzenbek" and the agents of W. R. Grace & Company, as admitted to you by them? [41]

Mr. FRANK.—I do not see how the witness can refresh his recollection from documents not made by himself.

Mr. BELL.—They were made by your client.

Mr. FRANK.—Very well, but he cannot refresh his recollection from them; they speak for themselves for whatever they are worth.

Mr. BELL.—Very well; I will offer them in evidence.

The WITNESS.—I think, Mr. Bell, you will notice that those are duplicated.

Mr. FRANK.—I noticed they were duplicated, yes. Will you let me take that duplicate, Mr. Bell?

Mr. BELL.—I offer the documents which have been identified by Mr. Hengstler in evidence as showing the correspondence which took place between the

(Testimony of L. T. Hengstler.)

Captain of the ship "Shewarzenbek" and the charterers and their agents with respect to the arrival and the unloading of that ship, involved in the issues in this case.

Mr. FRANK.—Q. Mr. Hengstler, were all of these documents passed to you at the same time, on the date of that letter, August, 1908?

A. The first four pages were passed to me at the same time. I have stated before that I received an additional list of documents later, and the additional list is the last three pages, I think it is exactly the same except that there are perhaps one or two new telegrams added to the other one; it is practically a duplicate with the addition of some other ones.

Q. Then the last three pages are not papers that were referred to in the letter of August 20, 1908?

A. No, they are not, but they are papers that were handed to me as being the correspondence that passed.

Q. Who was the particular person who handed them to you?

A. They were handed to me in the office of W. R. Grace & Company by a clerk; I do not know his name.
[42]

Q. Some clerk in the outside office?

A. I don't know what you call the outside office.

Q. Well, you know, that the managers have an inside office and that the clerks are out in the general office; you had no conference with any manager, did you?

A. Yes, I had a conference with Mr. Rossiter who is the chief manager. I think those documents were

(Testimony of L. T. Hengstler.)

handed to me on the order of Mr. Rossiter by a clerk.

Q. You say you think; of course, you don't know anything about that, Mr. Hengstler. You never heard Mr. Rossiter give any instructions, did you?

A. I have answered the question, I said I think so.

Q. When you say you think so you don't mean to affirm it, that is only your belief, and that is all, because you were not present and you never heard any order from Mr. Rossiter to deliver these documents, did you?

A. I would not be certain, but I think I was present when Mr. Rossiter told the clerk to give me copies of everything in the office. Mr. Rossiter from the beginning was willing to give me all the facts, on the instructions of his counsel, Mr. Eells.

Mr. FRANK.—That is all.

Mr. BELL.—I offer these documents which are attached together in evidence and ask that they be marked "Libelants' Exhibit 4." I wish to read this correspondence to the Court. The letter referred to reads as follows. It is dated August 20, 1908. (Reads.)

Then the first page attached to this letter, on the letterhead of W. R. Grace & Company, San Francisco, and marked "Copy" reads as follows. (Reads.)

It will be noted that on April 23d a strike commenced and on May 11th the strike was settled and loading resumed. The total [43] of lay days as computed by W. R. Grace & Company amounts to 261½. What I have read constitutes the first three

(Testimony of L. T. Hengstler.)

pages attached to the letter. The next three pages attached to the letter read as follows. These are the ones which did not come with the letter but are documents which were handed Mr. Hengstler, as he testified, by W. R. Grace & Company. They have noted when they received a telegram from him and when they sent a telegram to him. (Reading.)

(The document was here marked "Libelants' Exhibit No. 4.")

Now, how about these letters, Mr. Frank (indicating) ?

Mr. FRANK.—Mr. Bell, I am in the same position as to those as I was as to the others. The first I saw of them was when they came from your possession yesterday.

Mr. HENGSTLER.—Oh, Mr. Frank, we gave you notice 30 days ago to produce these letters.

Mr. FRANK.—I think your Honor understands my position about these letters. I did receive a notice to produce these letters and immediately upon receiving it I passed it along to my clients; they finally discovered that they were in the possession of Dr. Hengstler and I only got them Monday. I simply make that statement in response to what Mr. Hengstler has said.

Mr. HENGSTLER.—Did you ask them for any correspondence with the mill company that loaded this vessel?

Mr. FRANK.—I made a copy of your demand and passed it into them in that shape.

(Testimony of L. T. Hengstler.)

Mr. HENGSTLER.—And you got no correspondence from the mill company?

Mr. FRANK.—Is there anything in your demand about correspondence with the mill company?

Mr. BELL.—Yes, it says any and all correspondence, whether by telegram or by post or through any other medium, between any and all of the following, naming all the parties. [44]

Mr. FRANK.—I will look through my files; if I have any mill company correspondence you can have it.

Mr. HENGSTLER.—You never have looked through your files before?

Mr. FRANK.—Not as to the mill company. I did not understand you asked for that.

Mr. BELL.—Q. Mr. Hengstler, do you recognize the documents which you hold in your hands?

A. I do.

Q. Where have you seen those documents before, and under what circumstances?

A. They were handed to me by someone in the office of W. R. Grace & Company as copies of part of the correspondence referring to this demurrage case. I was then informed that H. C. Hylton, the writer of these letters, was the agent of W. R. Grace & Company at the loading port for the purpose of superintending the loading; that is what I understood at the time.

Mr. FRANK.—Q. Was it not that he was simply a lumber inspector?

A. Yes, he was the lumber inspector who acted

for W. R. Grace & Company.

Mr. BELL.—I offer these documents in evidence and ask that they be marked “Libelants’ Exhibit 5.”

Mr. FRANK.—We will have to object to those upon the ground that we are not bound by any admission of Mr. Hylton.

Mr. BELL.—I think it appears in W. R. Grace & Company’s own memorandum that he was agent for W. R. Grace & Company.

Mr. FRANK.—He was a lumber inspector, as I understand it.

Mr. BELL.—He says, “agent.”

The COURT.—The objection is overruled.

Mr. FRANK.—We note an exception.

Mr. BELL.—I offer in evidence of these letters those which are dated as follows: The letter of March 23, 1907, from H. D. Hylton to Messrs. Bartlett & Company. [45]

The letter of March 31, 1907, from H. D. Hylton to Messrs. Grace & Company.

The letter of April 11, 1907, from H. D. Hylton to Messrs. W. R. Grace & Company.

The letter of April 13, 1907, from Hylton to Grace & Company.

The letter of April 15, 1907, from Hylton to Grace & Company.

The letter of April 20, 1907, from Hylton to Grace & Company.

The letter of April 24, from Hylton to Messrs. Bartlett & Company.

Mr. FRANK.—Do I understand you are not offer-

ing the entire correspondence?

Mr. BELL.—I am not offering some of the later letters.

Mr. FRANK.—In order to save time I would suggest that you put them all in.

Mr. BELL.—If you wish the others to go in, Mr. Frank, you can offer them.

Mr. FRANK.—If part of them goes in they should all go in.

Mr. BELL.—I only wish the correspondence which has to do with the loading up there. What occurred after that time I do not care to offer. If you wish to offer the others you can do so. I am offering only the letters which I am specifying.

(The documents were here marked “Libelants’ Exhibit No. 5.”)

Mr. FRANK.—What is it you have just handed me, Mr. Bell?

Mr. BELL.—Those are the ones I have not offered in evidence.

Mr. FRANK.—Do you offer the letter of April 27th?

Mr. BELL.—No, I have not offered that.

Mr. FRANK.—And I would like to have that letter also.

Mr. BELL.—Here it is. (Handing.)

I will show you this letter, Mr. Frank. I wish to offer in evidence a copy of a letter to Captain W. C. W. Renny of Vancouver, from F. Flindt, the Master of the “Schwarzenbek,” dated March 19, 1907. [46]

Mr. FRANK.—This does not purport to be an

original, your Honor; it purports to be a copy. There is no signature to it. It is typewritten. It has no connection with us at all. I understand Mr. Hengstler will testify he received this from Grace & Company.

Mr. HENGSTLER.—Yes. There is a connection between this letter and W. R. Grace & Company because it is addressed to their stevedore.

Mr. FRANK.—It purports to be a copy of a letter made by these libelants and it purports to have been sent to Grace & Company.

Mr. HENGSTLER.—No, to their stevedore, W. C. W. Renny. I received it from Grace & Company as being one of the communications between the Captain and their stevedore.

Mr. FRANK.—That could hardly be. You received it from W. R. Grace & Company as being a paper that was received by them from your clients. Your Honor can see the paper for yourself and you can see what the objection is to it.

Mr. BELL.—Well, Mr. Frank, we demand the original of that letter. We are simply endeavoring to save time.

Mr. FRANK.—If I have the original you can have it.

Mr. BELL.—Your clients have it or they should have it.

Mr. FRANK.—You are assuming something which you have no right to assume.

The COURT.—I understand that this was furnished you with the other documents?

Mr. BELL.—Yes, your Honor, by *W. R. Grace & Company*.

The COURT.—The objection is overruled.

Mr. FRANK.—If your Honor will permit me just a moment: as your Honor will see, that purports to be a copy of a letter sent by the libelants to my clients who in turn passed it along to Mr. Hengstler. That is all there is to it. There is nothing to prove its authenticity. It would be purely a self-serving document that they passed [47] through us.

Mr. HENGSTLER.—Except the admission of your own client proves its authenticity.

The COURT.—This is a copy made by your client?

Mr. FRANK.—No, sir. You will see it says on the bottom, “True copy, Knohr & Burchard.”

Mr. BELL.—And I think that means that they sent a true copy to Knohr & Burchard.

The COURT.—That is on your letter-head. I will admit it.

Mr. FRANK.—We note an exception.

Mr. BELL.—That will be offered in evidence as “Libelants’ Exhibit 6.”

(The document was here marked “Libelants’ Exhibit 6.”)

We again renew our former demand for any and all correspondence that took place by telegraph or by post or through any other medium between *W. R. Grace & Co.*, *Bartlett & Co.*, *Captain Rennie*, *H. D. Hylton*, *Fraser River Lumber Company*—particularly the *Fraser River Lumber Company, Ltd.*, and *McCabe & Hamilton*, in addition to that which has

been offered. I suppose it will be admitted that a demand for these documents was made on May 12th?

Mr. FRANK.—Oh, yes. I have made my return. There is no use going over that all the time. You made a demand and I have given answer to what I have done with respect to it.

Mr. HENGSTLER.—If you have any correspondence with the mill will you let us have it?

Mr. FRANK.—If I have any correspondence between Grace & Co. and the mill that is germane to this case you are entitled to it.

Mr. HENGSTLER.—Or the captain and the mill, or the agent of Grace & Co. and the mill?

Mr. FRANK.—Anything that is germane to this case, Mr. Hengstler. [48]

Mr. BELL.—Or which may be germane to it.

Mr. FRANK.—I have something here now between the captain and the mill.

Mr. HENGSTLER.—We ask for the production of that.

Mr. FRANK.—And here is another. They ought to be in your possession. Those are all to the captain.

Mr. BELL.—I think that is all. We will look these over.

The COURT.—We will take a recess now until two o'clock.

(A recess was here taken until two o'clock P. M.)

[Proceedings had as to Certain Offers in Evidence, etc.]

Mr. BELL.—There is just one thing I want to call

attention to before submitting the case. It is alleged in the first paragraph that libellants were and are now doing business in the city of Hamburg, Empire of Germany, as copartners under the firm name and style of Knohr & Burchard, and were and now are the owners of the steel ship called the "Schwarzenbek." That is denied. Will that be admitted, Mr. Frank, or do you want still to deny that?

Mr. FRANK.—I don't know anything about them.

Mr. BELL.—The proof of ownership is the charter-party which has been offered in evidence, by which the respondent Grace & Co. contracted with the owners of the vessel. That is sufficient evidence to estop them from denying the ownership of Knohr & Burchard.

Then the only matter of any importance here is as to whether or not the libellants, Elvers and Zimmer constituted that firm of Knohn & Burchard; for the purpose of proving that those people were the members of that firm, I offer in evidence a power of attorney executed by them, before a notary, in Hamburg, certified by the United States Consul-general at Hamburg, that power of [49] attorney being a power of attorney to Mr. L. T. Hengstler.

Mr. FRANK.—I do not see how this is evidence of anything that binds us. This is a power of attorney executed by Mr. Hengstler and signed by these gentlemen. I object to its admission as incompetent and immaterial.

Mr. BELL.—It is certified to by a notary in Hamburg and also by the Consul-general.

Mr. FRANK.—He certifies to their signatures, but

there is no proof of the facts therein alleged.

Mr. BELL.—He certifies to them as “Shipowners, doing business in said city, as a copartnership under the name and style of Knohr & Burchard.”

The COURT.—The document will be admitted.

Mr. FRANK.—We note an exception.

(The document was here marked “Libellants’ Exhibit 7.”)

Mr. BELL.—And also a power of attorney executed in Hamburg and certified to by a notary public and also the Consul-general of Peru.

Mr. FRANK.—I make the same objection, your Honor; they are self-serving documents in any view that can be taken of them.

The COURT.—The objection is overruled.

Mr. FRANK.—We note an exception.

Mr. BELL.—And also another power of attorney executed in Hamburg, certified to by a notary public there, and also the Consul-general.

Mr. FRANK.—The same objection.

The COURT.—The same ruling.

Mr. FRANK.—Take an exception.

Mr. BELL.—Also two letters addressed to Andros & Hengstler, signed by Knohr & Burchard, on the letter-head having the firm [50] name and these two gentlemen’s names—one of them has, the other has not those names; it is signed by Knohr & Burchard, A. Zimmer, Jr.

Mr. FRANK.—The same objection.

The COURT.—I don’t think this is the best class of evidence on matters of this kind.

Mr. BELL.—We had anticipated that there would

be no objection, and that there would be no proof required on this point. If there is going to be that technical defense, all we have to do is to ask to amend the libel by having instead of the names Elvers & Zimmer, as libellants, the firm of Knohr & Burchard, and then under the power of attorney which has been offered in evidence here, Mr. Hengstler is authorized to sue in that name. If the court deems it necessary, we could amend.

The COURT.—I am simply saying that this is not the best character of proof. The matter is denied in the answer.

Mr. BELL.—It is denied, that is true, your Honor, but we assumed it was merely a formal denial, as usual.

Mr. FRANK.—I do not see how you could assume that.

Mr. HENGSTLER.—Mr. Frank, has it not been the universal practice in admiralty courts—in this admiralty court and in every admiralty court—to admit a commercial document that is signed *to* by our American Consulate as being sufficient proof? There are no technical rules in admiralty.

Mr. FRANK.—The Court has admitted it. We will argue the matter when it comes time to argue. I don't think there is any rule that a consulate's certificate can be substituted for proof of any fact alleged.

Mr. BELL.—In case the proof is not deemed sufficient, your Honor, we would then ask that the libel be considered as amended by the [51] substitution in there in lieu of the names of Elvers & Zimmer the

firm name of Knohr & Burchard, and that the power of attorney be considered as offered in evidence for the purpose of showing that Mr. Hengstler is authorized to institute this action in the name of Knohr & Burchard. And, as I say, the ownership by Knohr & Burchard of this vessel is sufficiently established by the fact that the charterers contracted with them as such.

Mr. FRANK.—I have no objection to their making any amendment they wish, but that does not change the rule of law regarding who the parties are that must sue.

Mr. BELL.—We can settle that point by taking a deposition, if necessary; and if the Court should deem this evidence insufficient, we ask for sufficient time in which to take a deposition and prove that fact.

The COURT.—The documents you have offered have been admitted. I cannot say at this time as to the sufficiency of them to establish the facts that are recited in them.

Mr. BELL.—I would ask permission, your Honor, if you deem that they do not sufficiently establish those facts, that we be permitted to take depositions, rather than delay the case by making that request now.

The COURT.—Do I understand that those letters have been offered?

Mr. BELL.—I offer those, your Honor, yes.

The COURT.—Then they will be marked "Libellants' Exhibit 8."

Mr. FRANK.—We note an exception.

(The document is here marked "Libellants' Exhibit 8.")

Mr. BELL.—That is all.

Mr. FRANK.—Now I offer in evidence the deposition of Andrew J. Stewart. (Reading.) [52]

I now offer in evidence the deposition of William C. W. Renny. (Reads.)

Now, I propose to offer in evidence the balance of the correspondence that the libellant left out this morning, of H. D. Hylton. I am not going to read it at the present time; I offer it and your Honor can consider it with the rest.

Mr. BELL.—We submit that it is immaterial, your Honor, that we have no objection to its going in together with the rest.

(The document was here marked Respondent's Exhibit "A.")

Mr. FRANK.—I now offer in evidence the protest of the master. I omit the formal part, and I will just read to your Honor the portion that relates to the subject matter. (Reads.)

(Document was here marked Respondent's Exhibit "B.")

I now offer in evidence the letter of the Fraser Mill Co. to Captain Flindt, under date of May 21, 1907; this is the letter I showed you gentlemen before the recess.

Mr. BELL.—I object to the introduction of this letter on the ground that it is immaterial, incompetent and irrelevant, and upon the further ground that the matter therein contained is a self-serving declaration on behalf of the charterers and their

mill; and upon the further, and the most serious ground of all, that it is plainly from the face of it hearsay.

Mr. FRANK.—The letter bears this superscription: “Fraser River Sawmills, Millside, B. C. Gentlemen. This is an exact copy of letter received from you by me on May 21, Stmt correct; F. Flindt.”

Mr. BELL.—I don’t know whether that is Captain Flindt’s signature, or not.

Mr. FRANK.—You can compare that with any paper you have got here.

Mr. BELL.—This writing is not his, is it?

Mr. FRANK.—No, the writing is not his; the signature is his. I say it is not his, because on the face of it it is not in his handwriting. [53]

Mr. BELL.—Who is the man who signed the letter?

Mr. FRANK.—Mr. Fowle.

Mr. BELL.—Is that his signature?

Mr. FRANK.—Now, Mr. Bell, you are asking me a good deal; I presume it is, because it is there.

Mr. BELL.—I have no knowledge of that letter. I never have seen it any way. And furthermore, the matter in it is clearly hearsay, and it is immaterial, irrelevant and incompetent. The letter is dated May 21, 1907, and is after this dispute was over, and it is simply directed to the captain, simply telling him that they are very much surprised at his claim.

Mr. FRANK.—We will read the letter and see what it is. It is part of the *res gestae*. It is in reply to his letter claiming demurrage before he went. The vessel was finished loading on May 15th. On

May 21 the captain delivered his bill. I will put them both in together; they are part of the same transaction, the letter and the answer.

Mr. BELL.—I renew my objection.

Mr. FRANK.—I offer Captain Flint's letter first.

The COURT.—Any objection to that?

Mr. BELL.—Yes, your Honor, the same objection, it is clearly immaterial, irrelevant and incompetent, and it is also hearsay as to the answer to that letter. Furthermore, it is not part of the *res gestae* in any manner or form. It is simply a dispute by these parties after the whole question is over as to whether there is or is not a claim. It is simply a matter of argument.

The COURT.—The objection is overruled. Flindt was the man on the ground who was acting, was he not?

Mr. FRANK.—Yes, your Honor, he was the master, (Reads.)

Now, this is the reply. (Reads.) [54]

Mr. BELL.—Your Honor, I would like to renew my objection to that letter on the ground that it is clearly a self-serving declaration and it is an endeavor to get into the record the evidence here of this man Fowle who it has been testified to is dead, without any opportunity on our part to cross-examine him. If that letter purported to be a notice or anything else that was material, it would be a different matter.

The COURT.—Whatever value that letter may have is derived from the acknowledgment of Captain Flindt.

Mr. BELL.—Well, your Honor, I object to the introduction of it on that ground, and on the ground that it has not been proved that Captain Flindt put his signature there after that writing was put there. This is the first time I ever saw that letter. It is not Captain Flindt's handwriting.

The COURT.—May I see it?

Mr. FRANK.—Yes, your Honor, and I wish you would compare it with the notice.

Mr. BELL.—The signature is his, but it is not his writing; it is Mr. Fowle's writing.

Mr. FRANK.—So far as the matter being written above it is concerned, that is defensive matter.

The COURT.—The document will be admitted.

(The document was here marked Respondent's Exhibit "C.")

Mr. FRANK.—I will add to that the protest that was attached to that letter; it also has Captain Flindt's signature there, the same as the other; it is part of the letter of May 21. I will have the three of them pinned together; that can be put right underneath the letter. [55]

[Testimony of Edward T. Ford, for Respondent.]

EDWARD T. FORD, called for the respondent, sworn.

Mr. FRANK—Q. Mr. Ford, what is your business?

A. I am sub-manager for W. R. Grace & Company.

Q. Were you in that position in the year 1907?

A. I was in the employ of W. R. Grace & Company, Chief Clerk in the lumber department.

Q. Do you remember the transaction with the ship

(Testimony of Edward T. Ford.)

“Schwarzenbek” at that time?

A. I remember of the transaction, I cannot remember all the details.

Q. Who paid the stevedores on that vessel?

A. The owners of the ship.

Q. What became of the cargo, whether it was retained by W. R. Grace & Company or sold?

A. It was sold.

Q. And the bill of lading—

Mr BELL.—(Intg.) Just a moment. That is objected to, your Honor, as being immaterial and irrelevant; I ask that the answer be stricken out.

Mr. FRANK.—It cannot be immaterial in the face of the argument that is made that if we are not liable under the charter-party we are liable under the bill of lading. I want to show that the bill of lading was indorsed and transferred to the buyer.

The COURT.—The objection is overruled.

A. I cannot recall whether the bill of lading was issued to order, or issued to W. R. Grace & Company, that is, consigned to order or consigned to W. R. Grace & Company. If it was consigned to order our usual course would be to indorse the bill of lading and forward it to our house on the West Coast who would in turn deliver the bill of lading to the buyer.

Mr. FRANK.—Q. Do you recall whether the cargo was sold before [56] the ship left Port Townsend?

A. No, I cannot recall that; I could not say positively, but I think without doubt it was.

Mr. BELL.—It may be taken, your Honor, that

(Testimony of Edward T. Ford.)

the objection is made to all this line of testimony and an exception noted?

The COURT.—Yes.

Mr. FRANK.—Q. Have you any papers or records in your office pertaining to this outside of what you passed over to Mr. Hengstler?

A. I think that is a complete record.

Mr. FRANK.—Take the witness.

Mr. BELL.—No questions.

**[Proceedings Had as to Certain Offers in Evidence,
etc.]**

Mr FRANK.—Now, if your Honor please, I am going to offer in evidence a sworn statement of Mr. W. P. Fowle, made before a Notary Public at Vancouver, and vided by the Peruvian Consul at Vancouver. In making this offer I will state your Honor that I am doing it because while my idea of it is that such documents are not admissible in evidence, still however as your Honor has admitted documents of that sort in evidence in this case over my objection, I understand that to be the rule that your Honor is following, and for that reason I offer it.

The COURT.—What is it?

Mr. FRANK.—It is a sworn statement by W. P. Fowle, made before a Notary Public in British Columbia and vided by the Consul of Peru at Vancouver, British Columbia. I want to show it to the other side and then I will read it.

Mr. BELL.—What is the purpose of the offer, to prove the facts which are related here?

Mr. FRANK.—Certainly.

Mr. BELL.—Mr. Fowle is dead and there is no ground that I know of by which this can be offered in evidence. The Notary does not certify that the facts are correct. He simply certifies to the signature [57] to the document. As to that I have no doubt whatever, but as to this manner of proving the facts which Mr. Fowle sets forth I object to as clearly hearsay and incompetent.

Mr. FRANK.—It is exactly on the same footing as the other documents that were offered by the other side to prove the fact of partnership.

The COURT.—The objection is sustained.

Mr. FRANK.—We take an exception. In order that we may get the nature of the document in the record for the purpose of our offer in case that the exception is good I would like to pass it to the Reporter and have it copied in the record.

The COURT.—No objection to that.

Mr. HENGSTLER.—Can I read it, Mr. Frank?

Mr. FRANK.—You can read it, certainly.

Now, I don't wish to bother the Court with anything further on this matter, but my recollection is the gentleman on the other side said that this was a self-serving declaration. Mr. Fowle and the Fraser Lumber Company are not the respondents here.

The COURT.—I understand that.

(The document referred to is as follows:)

**[Sworn Statement of W. P. Fowle, Dated June 28,
1907.]**

“Dominion of Canada,
Province of British Columbia,
Port of Vancouver.

W. B. Fowle, being first duly sworn deposes and says: That he has made and executed an affidavit in the matter of the claim of the Master of the ship ‘Schwartzembek’ for demurrage; that he makes this affidavit as a supplement thereto.

That on or about the 13th day of March, 1907, R. Collister, a duly appointed and qualified surveyor, mentioned in said charter, did hand to and deliver to this affiant a certain Preliminary Loading Certificate, relative to said ship, and did say to this affiant that said certificate was not to become effective till one week later than said 13th day of [58] March, 1907, namely not before the 20th day of March, 1907, at which date, said surveyor informed this affiant, said vessel would probably be ready for loading cargo agreeable to terms of charter. That during the period between the 13th day of March, and the 22d thereof said master and crew were engaged in discharging and trimming ballast, and rigging up for cargo.

That at the expiration of the time mentioned by said surveyor for said certificate becoming effective said Master, agreeable to said instructions from said surveyor, did present to this affiant on the 21st day of March, 1907, a certain written notice advising

that his said ship was in readiness to load cargo, and which notice was accepted agreeable to terms of said charter, and lay days began in accordance therewith.

That it was self-evident that said vessel was not ready for cargo at any date earlier than said 21st day of March, 1907, for the reason that said master did not demand or ask for cargo till the said 21st day of March, and the lay days began thereafter as provided by charter.

Dated this 28th day of June, 1907, at Vancouver, B. C.

W. P. FOWLE.

Sworn before me at the city of Vancouver, in the Province of British Columbia, this 28th day of June, 1907.

[Seal]

D. S. WAUBUSLYE,

A Notary Public in and for the Province of British Columbia.

V'r B. C.

[Seal]

ROB'T JACKSON,

Consul del Peru, en Vancouver, B. C."

Mr. FRANK.—Now, I make an offer of a letter dated April 2d, 1907, from Mr. Fowle to Captain Flindt which on the face of it appears to be a reply to a letter written by Captain Flindt. While the gentlemen are examining that, I will offer another copy of the letter which was offered this morning by the libelants, a letter [59] by Captain Flindt to Captain W. C. W. Renny, which your Honor admitted upon the ground that it carries the imprint of Grace & Company on the top; this is for the purpose of showing that it was in fact a copy of a letter

furnished them by Knohr & Burchard. It is to show that my construction of that other letter is correct.

Mr. HENGSTLER.—You mean to say it was furnished to us by Knohr & Burchard?

Mr. FRANK.—No, it was furnished to W. R. Grace & Company and that it passed from W. R. Grace & Company to you.

Mr. BELL.—The letter which Mr. Frank is about to offer in evidence signed by Mr. Fowle I object to upon the ground it is immaterial, irrelevant and incompetent and also upon the ground it is hearsay and endeavoring to get before the Court facts stated by this witness without giving us an opportunity to cross-examine him. It does not purport to be a notice of any kind and it is simply his view of the facts.

Mr. FRANK.—The only question is whether the letter is competent. It is a letter written to Captain Flindt in reply to a letter from Captain Flindt on the question of the trouble with the stevedores.

Mr. BELL.—Is that letter in evidence, Mr. Frank?

Mr. FRANK.—No, it is not. I don't know where it is. I will read this letter and then your Honor can determine the question. (Reads.)

The COURT.—The objection is overruled.

(The document was here marked Respondent's Exhibit "D.")

Mr. FRANK.—I offer another document now which was attached to that letter. It is another statement by W. P. Fowle, sworn to before a Notary Public in British Columbia and vided by the Consul of Peru at Vancouver. I assume your Honor will

make the same ruling. And I want it to appear in the record for the purpose of the offer.

The COURT.—Yes. This other letter that you offered as being a copy [60] or similar to the one already introduced in evidence will be admitted for whatever weight it may attach to your contention.

(The document was here marked Respondent's Exhibit "E.")

(The document requested to be inserted in the record is as follows:)

[Sworn Statement of William P. Fowle, Dated June 10, 1907.]

"IN THE MATTER of the Charter of the Steel Ship 'Schwarzenbek' to W. R. Grace & Co., Dated 16th day of August, 1906.

I, WILLIAM P. FOWLE, of Millside, in the Province of British Columbia, Manager of the Fraser River Sawmills, Limited, a body corporate, make oath and say:—

1. That I was the manager of the Fraser River Sawmills, Limited, at Millside, British Columbia, during the months of March, April and May, 1907, and have full knowledge of the matters hereinafter deposed to.

2. That I received notice that the ship "Schwarzenbek" would be ready to receive cargo on the 21st day of March, 1907, which said notice was signed by F. Flindt, master, but that the vessel was not rigged for taking in lumber until the morning of March 22d, and therefore in accordance with the terms of the charter the lay days did not commence until the 23d, being 24 hours after the vessel was at loading place

ready to receive cargo.

3. That at all times sufficient lumber was at the wharf cut ready to be loaded on the said ship, but that at one o'clock on April 23d there was a strike of the longshoremen employed by the stevedores, which delayed the loading of the said ship as set out in the protest served on the said Fraser River Saw-mills, Limited. That this was not a fault of the said mill company is shown by the fact that when the strike was settled and the loading of the ship was proceeded with the [61] mill company had over 400,000 feet of lumber on the wharf ready for loading on the said vessel, and that when the loading of the said vessel was completed over 70,000 feet of lumber was left in her berth cut for her order. At no time during the loading of the said ship was her loading delayed by reason of a shortness of supply of lumber to be placed in her.

4. That besides the Sundays after the 22d March, there were two public holidays, to wit, Good Friday and Easter Monday, occurring respectively on March 29th, and April 1st, so that the lay days did not expire until 29th April, had there been no delays occasioned by the ship, and that several times during the loading of the ship there was trouble between the captain and the stevedores, which necessitated delay in loading said ship, and that the captain of the said ship was on the 2d day of April notified in writing in respect thereof under date of the 2d day of April, 1907, a copy of which letter is hereto annexed and marked 'A.'

5. That the captain of the said ship at various

times said to me that he knew the ship had no claim against the Fraser River Sawmills, Limited, for demurrage and such admission was also made by the mate of said ship to me, and no daily notice or any notice, save and except the protest herein, was ever served by or on behalf of the said ship on the said Fraser River Sawmills, Limited.

WILLIAM P. FOWLE.

Sworn to before me at the city of Vancouver, in the Province of British Columbia, this 10th day of June, 1907.

D. J. BOWEN,

A Notary Public within British Columbia.

ROB'T. JACKSON, (Consular Seal)

Consul del Peru en Vancouver."

Mr. FRANK.—That is our case. [62]

[Motion to Amend Libel, etc.]

Mr. BELL.—Now, at this time, your Honor please, I will ask to amend the libel to conform to the proofs in the following respects: It appears from the protest that Mr. Frank has offered in evidence here that the ship arrived at Royal Roads on March 2d; it also appears from the deposition of Captain Flindt that she was there on March 2d, and that on March 2d he wired to W. R. Grace & Co. for orders pursuant to the charter-party, and notifying them that he was at Royal Roads. It also appears that on March 4th—and by the way, March the 2d was a Saturday; on March 4th, which was Monday, at 4:30 P. M., there was a notification to the charterers in San Francisco of the arrival, as is shown by the telegram;

that telegram was the captain's telegram evidently sent on March 2d in Royal Roads and arrived here in San Francisco; so that at that time, March 4th, at 4:30 P. M., the charterers had actual notice that the vessel was at Royal Roads. The telegrams show that the next thing that occurred was that on March 6th, which was Wednesday, at 4:30 P. M., the 48 hours, Sundays and legal holidays excepted, after the receipt of the captain's notification expired, that is to say, that notification was received by W. R. Grace & Co., on March 4th, at 4:30 P. M.; after they received that notification, they had 48 hours within which to give orders to the captain as to the loading mill. It appears that they did not give him any orders whatsoever within those 48 hours, and consequently, according to the provisions of the charter-party, after March 6th at 4:30 P. M., the lay days began to count.

The COURT.—You have had these documents in your possession all this time?

Mr. BELL.—But we were unable to say, until the protest was offered, whether those were the facts, or not. It now appears to be the fact that the master was at Royal Roads at that time, [63] and from the documents offered by the other side, and as shown by the deposition taken, that he notified W. R. Grace & Co. at that time, and it appears from the telegrams when they received the notice. We were unable prior to this time to know that those were the facts. It now appears that those are the facts without dispute.

Mr. FRANK.—I was just waiting for you to say

that. That is just where we differ. . The evidence shows conclusively that they received the notice on March 4th and on March 6th they designated Mill-side. Your Honor will find it over and over again in the evidence. The mere fact of what the captain put in his protest is not binding on us.

The COURT.—You can amend.

Mr. FRANK.—They can amend all they please, so far as I am concerned.

The COURT.—You can amend, but I am not admitting by permitting you to amend that it is an amendment to conform to the proof, because I am not saying now what the proof is.

Mr. BELL.—I understand, your Honor, but I may have permission to amend to what I think conforms to the proof.

The COURT.—Yes.

Mr. BELL.—I can prepare that amendment and hand it to your Honor and a copy of it to Mr. Frank. That will be all.

(The cause was thereupon submitted on briefs to be filed within certain periods to be agreed upon by counsel.)

(Here follow copies of exhibits.)

[Endorsed]: Filed Nov. 1, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [64]

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**(Answers of Witness, Renny, to Direct, Cross, and
Redirect Interrogatories.)**

BE IT REMEMBERED, that on the tenth day of April, 1914, at Seattle, in the State of Washington, there appeared before me N. W. Bolster, a Notary Public, at my office at No. 707 Lowman Building, Seattle, Washington, W. C. W. Renny, a witness produced on the part of respondent in a certain cause now pending in the District Court of the United States in and for the Northern District of California, Division One, wherein Martin H. A. Elvers and Frederic A. E. Zimmer are libelants, and W. R. Grace & Co., a Corporation, is respondent, being numbered in said court No. 13,980, and having been first duly cautioned to testify to the truth, the whole truth, and nothing but the truth, said witness did answer said several interrogatories, cross-interrogatories and redirect interrogatories as follows:

[Deposition of W. C. W. Renny, for Respondent.]

WILLIAM C. W. RENNY, (of Seattle), produced as a witness on behalf of respondent, being first duly cautioned and sworn, doth depose and testify as follows:

ANSWERING UNTO THE FIRST DIRECT INTERROGATORY, he saith:

William C. W. Renny; 53 years of age; marine expert.

ANSWERING UNTO THE SECOND DIRECT INTERROGATORY, he saith:

I was manager for the stevedoring firm of McCabe and Hamilton, incorporated. [65]

ANSWERING UNTO THE THIRD DIRECT INTERROGATORY he saith:

Yes.

ANSWERING UNTO THE FOURTH DIRECT INTERROGATORY he saith:

I was manager for the stevedoring firm of McCabe & Hamilton, who were loading the vessel at the time.

ANSWERING UNTO THE FIFTH DIRECT INTERROGATORY he saith:

In the early part of March, 1907.

ANSWERING UNTO THE SIXTH DIRECT INTERROGATORY he saith:

Yes.

ANSWERING UNTO THE SEVENTH DIRECT INTERROGATORY he saith:

Answering the first part of the question, I would say that the trimming of the vessel in accordance with the instructions of the surveyor was finished

(Deposition of William C. W. Renny.)

on the twenty-first day of March, 1907. The latter part of the question is not intelligible to me.

ANSWERING UNTO THE EIGHTH DIRECT INTERROGATORY he saith:

I had just a general conversation with the master concerning the loading of the ship about the sixteenth of March, 1907. I could not state anything in particular that took place, any more than that it was just the general chat which would occur between the stevedore and the master of a ship.

ANSWERING UNTO THE NINTH DIRECT INTERROGATORY he saith:

She was having the ballast trimmed by her crew.

ANSWERING UNTO THE TENTH DIRECT INTERROGATORY he saith:

On the twenty-first of March, 1907 he asked for a few men to assist in rigging the ship for cargo.

ANSWERING UNTO THE ELEVENTH DIRECT INTERROGATORY he saith:

Yes there was such a custom.

ANSWERING UNTO THE TWELFTH DIRECT INTERROGATORY he saith:

The custom was for the stevedores to rig the ship, and to charge for so doing. [66]

ANSWERING UNTO THE THIRTEENTH DIRECT INTERROGATORY he saith:

Five or six years previous to 1907.

ANSWERING UNTO THE FOURTEENTH DIRECT INTERROGATORY he saith:

Yes, I believe he did. Of course, we were not doing it for nothing, but there is no documentary evi-

(Deposition of William C. W. Renny.)

dence now in existence on that subject for the reason that the stevedoring firm of McCabe & Hamilton sold out its business several years ago.

ANSWERING UNTO THE FIFTEENTH DIRECT INTERROGATORY he saith:

The rigging of the vessel was finished on March 21, 1907.

ANSWERING UNTO THE SIXTEENTH DIRECT INTERROGATORY he saith:

I do not know.

ANSWERING UNTO THE SEVENTEENTH DIRECT INTERROGATORY he saith:

March 22, 1907.

ANSWERING UNTO THE EIGHTEENTH DIRECT INTERROGATORY he saith:

No.

ANSWERING UNTO THE NINETEENTH DIRECT INTERROGATORY he saith:

No.

ANSWERING UNTO THE TWENTIETH DIRECT INTERROGATORY he saith:

I cannot identify the document shown me. Respondent's Exhibit "A," while I have no doubt but that it is the notice I never saw the same.

ANSWERING UNTO THE TWENTY-FIRST DIRECT INTERROGATORY he saith:

Yes, the master stopped the work and prevented us from loading any more cargo, from the first to the third of April, 1907.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE TWENTY-SECOND
DIRECT INTERROGATORY he saith:

He stated that he objected to the quality of the lumber that he was receiving from the mill.

ANSWERING UNTO THE TWENTY-THIRD
DIRECT INTERROGATORY he saith:

He withdrew his objections.

ANSWERING UNTO THE TWENTY-FOURTH
DIRECT INTERROGATORY he saith:

He resumed the loading on the afternoon of April 3, 1907. He [67] took on board the same cargo that he had objected to receiving on April 1, 1907.

ANSWERING UNTO THE TWENTY-FIFTH
DIRECT INTERROGATORY he saith:

Yes, they entered upon a strike on April 23, 1907, demanding increased wages and shorter hours.

ANSWERING UNTO THE TWENTY-SIXTH
DIRECT INTERROGATORY he saith:

The master tried to load the vessel with the crew and so continued for two or three days.

ANSWERING UNTO THE TWENTY-SEVENTH DIRECT INTERROGATORY he saith:

The strike was settled and adjusted on May 11, 1907, and the loading was resumed by the stevedores on said date.

ANSWERING UNTO THE TWENTY-EIGHTH
DIRECT INTERROGATORY he saith:

Every effort was made to secure other labor, but we were prevented by the coercion and intimidation from the strikers as usual in such strikes.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE TWENTY-NINTH
DIRECT INTERROGATORY he saith:

The master said nothing on the subject that I recollect.

ANSWERING UNTO THE THIRTIETH DIRECT
INTERROGATORY he saith:

Yes.

ANSWERING UNTO THE THIRTY-FIRST
DIRECT INTERROGATORY he saith:

Yes, he interfered. There was no apparent cause for his interference. I could not state just the length of time that it was delayed—he was one of the butting-in sort of chaps.

ANSWERING UNTO THE THIRTY-SECOND
DIRECT INTERROGATORY he saith:

May 15, 1907.

ANSWERING UNTO THE THIRTY-THIRD
DIRECT INTERROGATORY he saith:

I do not recollect what holidays intervened; I presume there must have been some, because Easter and Good Friday would come in and I think Easter Monday and Good Friday are celebrated as holidays in British Columbia.

ANSWERING UNTO THE THIRTY-FOURTH
DIRECT INTERROGATORY he saith:

No. [68]

ANSWERING UNTO THE THIRTY-FIFTH
DIRECT INTERROGATORY he saith:

The master.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE THIRTY-SIXTH
DIRECT INTERROGATORY he saith:

I know that Mr. Fowle has passed away. I have not heard of Mr. Carter for six years and do not know where he is at this time.

ANSWERS TO CROSS-INTERROGATORIES.

ANSWERING UNTO THE FIRST CROSS-INTERROGATORY he saith:

I think the notice was given in writing; I could not say whether it was in writing or by wire, but I think it was given in writing. The firm of McCabe & Hamilton wound up their operations in British Columbia years ago and sold out their business and I do not know where the notice can be found now.

ANSWERING UNTO THE SECOND CROSS-INTERROGATORY he saith:

The firm of McCabe & Hamilton had done work for the charterer, W. R. Grace & Co., for several years. I was the firm's Hawaiian partner and I was down in Honolulu for five years and a half and I never wrought for them on Puget Sound before this time. I had previously loaded lumber from Millside in other vessels, not chartered by Grace & Co., however.

ANSWERING UNTO THE THIRD CROSS-INTERROGATORY he saith:

On March 13, 1907, I was somewhere in British Columbia, probably at Millside. My first visit to Millside, Fraser River, was towards the end of January, 1907.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE FOURTH CROSS-INTERROGATORY he saith:

Millside is a mill town; at that time it consisted of a moving population of workmen composed of mill employees, longshoremen, etc. At that time, I presume, it was considered a townsite. I should judge it was about seventeen miles from the mouth of the Fraser River; about from fourteen to seventeen miles from Vancouver; about eighty-five miles from Royal Roads; about ninety miles from Port Townsend. It could be reached from Vancouver in about fifty minutes [69] on the interurban electric cars. From Royal Roads, with the service at that time one would have to leave Victoria about midnight, arriving in Vancouver at seven o'clock A. M. and thence to Millside by electric tram. From Port Townsend one would have to go via Seattle and thence to Vancouver or via Victoria and thence to Vancouver. There was no direct service to Millside. From the mouth of the Fraser River it would take two or three hours, but there was no regular means of transportation.

ANSWERING UNTO THE FIFTH CROSS-INTERROGATORY he saith:

I do not know when the ship arrived at Millside nor when she moored alongside the wharf, but it was some time previous to March 16, 1907.

ANSWERING UNTO THE SIXTH CROSS-INTERROGATORY he saith:

I do not know whether there were stevedores at

(Deposition of William C. W. Renny.)

Millside on the day of the ship's arrival. The stevedores who loaded the ship arrived some time previous to March 21, 1907. We had men working nearly all the time at Millside and we just detailed men to work on the different ships or whatever work we were doing. Henry Carter was the foreman in charge of the longshoremen who loaded the ship, and I was the manager.

ANSWERING UNTO THE SEVENTH CROSS-INTERROGATORY he saith:

I have stated in my answer to the seventh direct interrogatory that that part of the question was unintelligible to me.

ANSWERING UNTO THE EIGHTH CROSS-INTERROGATORY he saith:

It is most likely that the conversation referred to took place on board the ship. I cannot state positively as to the place.

ANSWERING UNTO THE NINTH CROSS-INTERROGATORY he saith:

The custom or usage referred to would apply to both deep-water lumber carriers or to coastwise vessels, provided that stevedores were engaged. Of course, a great many of the coastwise vessels load their cargo with their own crew. [70]

ANSWERING UNTO THE TENTH CROSS-INTERROGATORY he saith:

They have to rig span, fall, and burton. The stevedores perform this work and make extra charge for doing the same.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE ELEVENTH CROSS-INTERROGATORY he saith:

Over her side.

ANSWERING UNTO THE TWELFTH CROSS-INTERROGATORY he saith:

Millside; Lester W. David, owner.

ANSWERING UNTO THE THIRTEENTH CROSS-INTERROGATORY he saith:

The same stevedoring firm helped with the rigging for loading the lumber, at the request of the captain. Span, fall and sliding burton was the rigging used. Rigging was commenced on March 21, 1907.

ANSWERING UNTO THE FOURTEENTH CROSS-INTERROGATORY he saith:

I understand "ready to receive cargo" as used in said interrogatories means to have ballast trimmed and gear rigged to the satisfaction of the surveyor.

ANSWERING UNTO THE FIFTEENTH CROSS-INTERROGATORY he saith:

I understand McCabe & Hamilton to have been "the contracting stevedores." I would understand "want of readiness" to mean not having sufficient men and equipment to carry out the work, but there was not any want of readiness in this case.

ANSWERING UNTO THE SIXTEENTH CROSS-INTERROGATORY he saith:

I have not answered the twentieth direct interrogatory except to state that I had not seen the notice herein referred to.

(Deposition of William C. W. Renny.)

ANSWERING UNTO THE SEVENTEENTH
CROSS-INTERROGATORY he saith:

I have stated that I did not see any such notice.

ANSWERING UNTO THE EIGHTEENTH
CROSS-INTERROGATORY he saith:

On March 21, 1907, the master of the ship asked for some men to assist in rigging to receive cargo. He did not say anything to me that I can recall as to the ship having waited to be loaded. [71]

ANSWERING UNTO THE NINETEENTH
CROSS-INTERROGATORY he saith:

I cannot state. I presume they had plenty of lumber ready before the ship was ready, as they usually have in such cases.

ANSWERING UNTO THE TWENTIETH
CROSS-INTERROGATORY he saith:

I have no such letters or notices for the reasons stated in my answer to the fourteenth direct interrogatory and to the first cross-interrogatory.

ANSWERING UNTO THE TWENTY-FIRST
CROSS-INTERROGATORY he saith:

I recollect no particular conversation, request, order or communication. I was in daily contact with the manager of the mill and my communications and conversations with him would be in the nature of such general conversations and communications as would take place between us concerning such work.

ANSWERING UNTO THE TWENTY-SECOND
CROSS-INTERROGATORY he saith:

The firm had previously loaded deep-water lum-

(Deposition of William C. W. Renny.)

ber ships at the same wharf.

ANSWERING UNTO THE TWENTY-THIRD
CROSS-INTERROGATORY he saith:

I am unable to do this for the reasons stated in my answers to the fourteenth direct interrogatory and the first cross-interrogatory.

ANSWERING UNTO THE TWENTY-FOURTH
INTERROGATORY he saith:

I have answered this in my answer to the last preceding interrogatory.

ANSWERING UNTO THE TWENTY-FIFTH
CROSS-INTERROGATORY he saith:

He stated that the quality of the lumber was not suitable.

ANSWERING UNTO THE TWENTY-SIXTH
CROSS-INTERROGATORY he saith:

I cannot recall.

ANSWERING UNTO THE TWENTY-
SEVENTH CROSS-INTERROGATORY he
saith:

I would understand "the time said master gave notice of readiness to receive cargo" to mean the time that he served written notice on the mill. I would understand "the normal rate per day" to be about from fifty to sixty thousand feet per day. We knew the [72] quantity of lumber by the daily returns we received from the mill every night.

ANSWERING UNTO THE TWENTY-EIGHTH
CROSS-INTERROGATORY he saith:

I know it because I was there when the strike took place.

(Deposition of William C. W. Renny.)

ANSWERS TO REDIRECT INTERROGATORY.
ANSWERING THE FIRST REDIRECT INTERROGATORY he saith:

The trimming of the vessel in accordance with the instructions of the surveyor, and the rigging of the vessel to receive her cargo was completed and concluded on March 21, 1907.

W. C. W. RENNY.

Subscribed and sworn to before me this tenth day of April, A. D. 1914.

N. W. BOLSTER,
Notary Public in and for the State of Washington,
Residing at Seattle. [73]

**[Certificate of Commissioner to Deposition of W. C.
W. Renny.]**

Seattle, Washington,
United States of America,—ss.

I, N. W. Bolster, a Notary Public, duly commissioned and sworn, in and for the State of Washington, residing at Seattle, Washington, DO HEREBY CERTIFY:

That pursuant to the Stipulation for the taking of the deposition of W. C. W. Renny, before me at Seattle, Washington, and the Order thereon dated March 24, 1914, and pursuant to the Commission mentioned in said stipulation and also attached hereto, W. C. W. Renny, one of the witnesses named in said commission and the witness named in the said stipulation and order dated March 24, 1914, appeared before me on the tenth day of April, 1914,

when I took, completed and reduced to writing his answers or depositions to the interrogatories, direct, cross, and redirect, to the said commission attached, the same answers being the same hereto attached.

AND I FURTHER CERTIFY: That previous to such answers or depositions being taken, I duly administered to the said witness the following oath:

“I do solemnly swear that upon the interrogatories, direct, cross and redirect that shall be propounded to me, I shall true answer make, and that I shall speak the truth, the whole truth, and nothing but the truth, so help me God.”

IN TESTIMONY WHEREOF, I, the said Notary Public, have hereunto subscribed my name and affixed my Official Seal at Seattle, Washington, this tenth day of April, 1914.

[Notary Seal] N. W. BOLSTER. [74]

*In the District Court of the United States in and for
the Northern District of California*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Stipulation for Withdrawal of Commission Depositions, etc., for Taking of Testimony W. C. W. Renny.

IT IS HEREBY STIPULATED by and between

the respective parties hereto that the commission to take the depositions of A. J. Stewart, W. P. Fowle, W. C. W. Renny and Henry Carter, issued in the above-entitled cause on the 20th day of February, 1914, together with the interrogatories, exhibits and deposition which has been returned to the Court in said cause, may be withdrawn from the files of said Court after having been opened and filed herein, and that the said commission may be forwarded to N. W. BOLSTER, a Notary Public at Seattle, Washington, for the purpose of taking the testimony of W. C. W. Renny at Seattle, Washington, instead of at the place and in the matter provided in the commission to take said depositions, and that when so taken, the commission, together with all the testimony, may be returned to the Court above named and filed in the above-entitled cause with the same force and effect as if taken as originally provided in the commission and stipulations for taking the same, and any and all objections that the said deposition was taken as herein provided are hereby waived.

ANDROS & HENGSTLER,

Proctors for Libelants.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent.

Dated March 24, 1914.

So ordered.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Mar. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [75]

**Exhibit "A" (Attached to Depositions of W. C. W.
Renny et al.).**

KNOHR & BURCHARD NFL., HAMBURG.

Scotts Code 1890.—A B C Code 1901.

Telegramm-Adresse: Knohrhard, Hamburg,

Rec'd Nov. 20, 1908.

Ans'd

Millside, Den 21 Marz, 1907.

Schiff: SCHWARZENBEK.

RHEDEREI-ABTHEILUNG

(Flag)

eis.o.stahl	Tons Schwergut
4 M.Bark "Reinbek"	ca. 4500
4 M.Bark "Schurbek"	" 4000
4 M.Bark "Elbek"	" 3900
4 M.Bark "Schiffbek"	" 3900
4 M.Bark "Wandsbek"	" 3700
4 M.Bark "Barmbek"	" 3350
Vollschiff "Schwarzenbek"	" 3300
Vollschiff "Flottbek"	" 3075
Vollschiff "Tarpenbek"	" 3050
Barkschiff "Steinbek"	" 2700
Vollschiff "Rodenbek"	" 2600
Barkschiff "Osterbek"	" 2550

To the Manager of

The Millside Sawmill.

I beg you to inform that the German Ship
"Schwarzenbek" *nov* to lie at his place 9 days wait-
ing for stevedore. will be ready to receive cargo at

noon 21, of Marz 1907.

Yours verry truly,

F. FLINDT,

Master.

Vessel was not rigged for taking in lumber until the morning of March 22d.

(Notarial seal)

W. P. FOWLE.

N. B. Nur eine seite beschreiben.

Exhibit "A" introduced in evidence before me on the 20th day of March, 1914, under the Commission issued to me out of the United States District Court in and for the Northern District of California, Division One, in the case of Martin H. A. Elvers and Frederic A. E. Zimmer, Libelants, vs. W. R. Grace & Co., a Corporation, Respondent, No. 13,980, of certain witnesses therein named.

D. G. MARSHAL,

A Notary Public in and for the Province of British Columbia. [76]

[Deposition of A. J. Stewart, for Respondent.]

In the District Court of the United States in and for the Northern District of California, Division One.

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E. ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

(Deposition of A. J. Stewart.)

BE IT REMEMBERED that on the 20th day of March, 1914, at Vancouver, British Columbia, there appeared before me, David Gordon Marshall, a Notary Public in and for the Province of British Columbia, A. J. Stewart, a witness produced on the part of the respondent in a certain cause now pending in the District Court of the United States in and for the Northern District of California, Division One, wherein Martin H. A. Elvers and Frederic A. E. Zimmer are libelants, and W. R. Grace & Co., a corporation, is respondent, being numbered in said court No. 13,980, and *th* having been first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, said witness did answer said several interrogatories, cross-interrogatories and redirect interrogatories as follows:

(ANSWERS OF WITNESS STEWART TO
DIRECT, CROSS AND REDIRECT INTER-
ROGATORIES.)

A. J. STEWART, of city of Fraser Mills, being produced, sworn and examined doth depose and testify as follows:

ANSWERING UNTO THE FIRST DIRECT INTERROGATORY he saith:

Andrew J. Stewart; 46 years old; lumber inspector and foreman of mill.

ANSWERING UNTO THE SECOND DIRECT INTERROGATORY he saith:

Was foreman of mill of Fraser River Mills, Limited, at Millside.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE THIRD DIRECT INTERROGATORY he saith:

Yes. [77]

ANSWERING UNTO THE FOURTH DIRECT INTERROGATORY he saith:

Looked after the cutting of the lumber for her.

ANSWERING UNTO THE FIFTH DIRECT INTERROGATORY he saith:

Had no connection with the stevedoring firm.

ANSWERING UNTO THE SIXTH DIRECT INTERROGATORY he saith:

Had nothing to do with the stevedoring.

ANSWERING UNTO THE SEVENTH DIRECT INTERROGATORY he saith:

21st. March, 1907.

ANSWERING UNTO THE EIGHTH DIRECT INTERROGATORY he saith:

Had no conversation with master about loading.

ANSWERING UNTO THE NINTH DIRECT INTERROGATORY he saith:

Had no conversation.

ANSWERING UNTO THE TENTH DIRECT INTERROGATORY he saith:

There was no request made to me.

ANSWERING UNTO THE ELEVENTH DIRECT INTERROGATORY he saith:

There was no custom. Matter of contract between owners and charterers.

ANSWERING UNTO THE TWELFTH DIRECT INTERROGATORY he saith:

Answered by eleventh direct interrogatory.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE THIRTEENTH DIRECT INTERROGATORY he saith:

Have never been engaged in stevedoring.

ANSWERING UNTO THE FOURTEENTH DIRECT INTERROGATORY he saith:

Had nothing to do with the stevedoring.

ANSWERING UNTO THE FIFTEENTH DIRECT INTERROGATORY he saith:

Had nothing to do with the stevedoring.

ANSWERING UNTO THE SIXTEENTH DIRECT INTERROGATORY he saith:

21st March, 1907.

ANSWERING UNTO THE SEVENTEENTH DIRECT INTERROGATORY he saith:

22d March, 1907.

ANSWERING UNTO THE EIGHTEENTH DIRECT INTERROGATORY he saith:

No. [78]

ANSWERING UNTO THE NINETEENTH DIRECT INTERROGATORY he saith:

No.

ANSWERING UNTO THE TWENTIETH DIRECT INTERROGATORY he saith:

The document marked exhibit "A" is the notice served by the master on March 21st, 1907. I recognize the notice from having seen it at the time in the mill office.

ANSWERING UNTO THE TWENTY-FIRST DIRECT INTERROGATORY he saith:

Yes—during the first and second of April and up until noon of the third of April, 1907.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE TWENTY-SECOND
DIRECT INTERROGATORY he saith:

No statement made to me by the master.

ANSWERING UNTO THE TWENTY-THIRD
DIRECT INTERROGATORY he saith:

No statement made to me by the master.

ANSWERING UNTO THE TWENTY-FOURTH
DIRECT INTERROGATORY he saith:

Resumed loading at noon on 3d April, 1907, on same cargo as was being loaded when master stopped loading.

ANSWERING UNTO THE TWENTY-FIFTH
DIRECT INTERROGATORY he saith:

Yes, there was a strike on the 23d April, 1907—the men struck for higher wages and less hours.

ANSWERING UNTO THE TWENTY-SIXTH
DIRECT INTERROGATORY he saith:

The master started his crew loading cargo and continued doing so up to the 10th May, 1907.

ANSWERING UNTO THE TWENTY-SEVENTH DIRECT INTERROGATORY he saith:

11th May, 1907.

ANSWERING UNTO THE TWENTY-EIGHTH
DIRECT INTERROGATORY he saith:

Had nothing to do with the procuring of labor.

ANSWERING UNTO THE TWENTY-NINTH
DIRECT INTERROGATORY he saith:

Do not remember at this late date.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE THIRTIETH DIRECT
INTERROGATORY he saith:

Yes. [79]

ANSWERING UNTO THE THIRTY-FIRST DI-
RECT INTERROGATORY he saith:

The only time the master interfered was from the first to the third of April previously mentioned.

ANSWERING UNTO THE THIRTY-SECOND
DIRECT INTERROGATORY he saith:

May 15th, 1907.

ANSWERING UNTO THE THIRTY-THIRD
DIRECT INTERROGATORY he saith:

Two holidays—Good Friday and Easter Monday—
29th March and first of April.

ANSWERING UNTO THE THIRTY-FOURTH
DIRECT INTERROGATORY he saith:

No.

ANSWERING UNTO THE THIRTY-FIFTH
DIRECT INTERROGATORY he saith:

Don't know.

ANSWERING UNTO THE THIRTY-SIXTH
DIRECT INTERROGATORY he saith:

Don't know where Mr. Renny is. I understand
Mr. Carter is dead. Mr. Fowle is dead.

ANSWERING UNTO THE FIRST CROSS-IN-
TERROGATORY he saith:

No notice given to me. Notice was given to the
manager of the mill.

ANSWERING UNTO THE SECOND CROSS-IN-
TERROGATORY he saith:

Had no connection with the stevedoring.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE THIRD CROSS-INTERROGATORY he saith:

January, 1906. Employed at Millside, Fraser River.

ANSWERING UNTO THE FOURTH CROSS-INTERROGATORY he saith:

Millside is situate on the north Bank of the Fraser River on a branch of the C. P. R. running from Westminster Junction to New Westminster—about 5 miles from New Westminster. Was neither town or city or subdivision of town but under Government control. About 19 miles distant from the mouth of the Fraser River. Distant from city of Vancouver about 35 miles by water and about 17 miles by railway. Distant from Royal Roads over 120 miles. Know nothing of the time taken to travel from places mentioned to Millside. [80]

ANSWERING UNTO THE FIFTH CROSS-INTERROGATORY he saith:

Arrived on or about the 13th day of March, 1907.

ANSWERING UNTO THE SIXTH CROSS-INTERROGATORY he saith:

Don't remember if there was a stevedore at Millside when the ship arrived. Carter was the name of the foreman.

ANSWERING UNTO THE SEVENTH CROSS-INTERROGATORY he saith:

Have never rigged a vessel for receiving cargo but am able to state when vessel is rigged for receiving cargo.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE EIGHTH CROSS-INTERROGATORY he saith:

Had no conversation.

ANSWERING UNTO THE NINTH CROSS-INTERROGATORY he saith:

Know of no custom. Only a matter of contract.

ANSWERING UNTO THE TENTH CROSS-INTERROGATORY he saith:

Know nothing about stevedoring work.

ANSWERING UNTO THE ELEVENTH CROSS-INTERROGATORY he saith:

Loaded over her side.

ANSWERING UNTO THE TWELFTH CROSS-INTERROGATORY he saith:

Mill had no name—owners' name Fraser River Mills, Limited—loaded at wharf of Fraser River Mills, Limited.

ANSWERING UNTO THE THIRTEENTH CROSS-INTERROGATORY he saith:

Had nothing to do with the stevedoring and do not remember.

ANSWERING UNTO THE FOURTEENTH CROSS-INTERROGATORY he saith:

I understood by "ready to receive cargo" that the tackle and things were all in place and I also had seen notice from the master that the ship was ready to receive cargo on that date.

ANSWERING UNTO THE FIFTEENTH CROSS-INTERROGATORY he saith:

The stevedores who have the contract for loading the vessel. I did not understand whose duty it was

(Deposition of A. J. Stewart.)

to rig the ship but after the ship was rigged on the 21st of March there was no delay on the part of the contracting stevedores except by strike.

ANSWERING UNTO THE SIXTEENTH CROSS-INTERROGATORY he saith:

I understand by "served upon the Mill" to be the delivery [81] of the notice by the master to the manager at the mill that the boat was ready to receive cargo.

ANSWERING UNTO THE SEVENTEENTH CROSS-INTERROGATORY he saith:

I had no notice either verbal or in writing and knew of no other notice being given to the mill than the notice of the 21st of March.

ANSWERING UNTO THE EIGHTEENTH CROSS-INTERROGATORY he saith:

Never was asked.

ANSWERING UNTO THE NINETEENTH CROSS-INTERROGATORY he saith:

The mill was ready to deliver whenever the ship was ready.

ANSWERING UNTO THE TWENTIETH CROSS-INTERROGATORY he saith:

The only notice that I know of is marked exhibit "A" to the twentieth interrogatory.

ANSWERING UNTO THE TWENTY-FIRST CROSS-INTERROGATORY he saith:

Had no transaction with the stevedores and was not present at any conversation between the manager of the mill and the representatives of the stevedores.

(Deposition of A. J. Stewart.)

ANSWERING UNTO THE TWENTY-SECOND
CROSS-INTERROGATORY he saith:

Do not know.

ANSWERING UNTO THE TWENTY-THIRD
CROSS-INTERROGATORY he saith:

Only notice is exhibit "A" to twentieth interrogatory.

ANSWERING UNTO THE TWENTY-FOURTH
CROSS-INTERROGATORY he saith:

Yes. Exhibit "A" to the twentieth interrogatory is the only notice or communication that I know of.

ANSWERING UNTO THE TWENTY-FIFTH
CROSS-INTERROGATORY he saith:

He objected to short lengths.

ANSWERING UNTO THE TWENTY-SIXTH
CROSS-INTERROGATORY he saith:

There were none.

ANSWERING UNTO THE TWENTY-SEVENTH
CROSS-INTERROGATORY he saith:

I understand by the expression "the time said master gave notice of readiness to receive cargo" the time when the master [82] gave the notice of the 21st of March. I do not remember at this late date the normal rate per day but being foreman of the mill I know there was no delay on the part of the mill.

ANSWERING UNTO THE TWENTY-EIGHTH
CROSS-INTERROGATORY he saith:

My source of knowledge is that I was present on the ground and knew from the stevedores themselves what the cause of the strike was.

ANSWERING UNTO THE FIRST REDIRECT
INTERROGATORY he saith:

21st March, 1907.

A. J. STEWART.

Examined, taken, reduced to writing and subscribed and sworn to by the said Andrew J. Stewart before me, at Vancouver, British Columbia, this 20th day of March, A. D. 1914.

(Notarial Seal) D. G. MARSHALL,
A Notary Public in and for the Province of British
Columbia.

**[Certificate of Commissioner to Deposition of A. J.
Stewart.]**

Vancouver, British Columbia,
County of Vancouver,—ss.

I, David Gordon Marshall, a notary public duly commissioned and sworn, at Vancouver, British Columbia,

DO HEREBY CERTIFY: That pursuant to the commission hereto attached, A. J. Stewart, one of the witnesses named in the said commission, appeared before me on the —— day of March, A. D. 1914, when I took, completed and reduced to writing his answers or depositions to the interrogatories, direct, cross and redirect, to the said commission attached, the same answers being the same hereto annexed.

AND I FURTHER CERTIFY: That previous to such answers or depositions being taken I duly administered to the said witness the following oath:

“I do solemnly swear that upon the interroga-

tories, direct, cross, and redirect that shall be propounded to me, I shall true answer make, and that I shall speak the truth, the whole truth, and nothing but the truth, so help me God.

IN TESTIMONY WHEREOF, I, the said notary public have hereunto subscribed my name and affixed my official seal at Vancouver, British Columbia, this 20th day of March, A. D. 1915.

D. G. MARSHALL, (Seal)

Notary Public in and for the Province of British Columbia. [83]

In the District Court of the United States in and for the Northern District of California.

IN ADMIRALTY —No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E. ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondents.

Stipulation for Issuance of Commission to Take Testimony.

IT IS HEREBY STIPULATED that a commission may issue in the above-entitled cause, directed to any notary public at Victoria, British Columbia, to take the testimony of A. J. Stewart, W. P. Fowle, W. C. W. Renny and Henry Carter, upon such interrogatories direct, cross and redirect as the parties hereto may see fit to propound;

IT IS FURTHER STIPULATED that the said libelants shall serve upon the respondent, and file in said cause, its cross-interrogatories within two days from the date of receiving the direct interrogatories.

Dated February 17, 1914.

ANDROS & HENGSTLER,

Proctors for Libelants.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent. [84]

*In the District Court of the United States in and for
the Northern District of California, Division
One.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Order for Issuance of Commission to Take
Testimony.**

Upon reading the stipulation hereto attached for the issuance of a commission to take testimony in the above-entitled cause,

IT IS HEREBY ORDERED that a commission be issued in this cause, out of this court, directed to any notary public at Victoria, British Columbia, to examine A. J. Stewart, W. C. W. Renny, W. P.

Fowle and Henry Carter, in accordance with said stipulation.

Dated February 20th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 20, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [85]

**[Direct Interrogatories to be Administered to A. J.
Stewart et al.]**

*In the District Court of the United States in and
for the Northern District of California, Division
One.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

DIRECT INTERROGATORIES to be administered to A. J. Stewart, W. P. Fowle, W. C. W. Renny and Henry Carter, witnesses to be produced, sworn and examined on behalf of the respondent in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States in and for the Northern District of California, Division One, wherein Martin H. A. Elvers and Frederic A. E. Zimmer are libelants, and W. R. Grace & Co., a corporation, is respondent:

(Deposition of A. J. Stewart.)

INTERROGATORIES TO BE PROPOUNDED
to

A. J. STEWART.

W. P. FOWLE.

W. C. W. RENNY.

HENRY CARTER.

FIRST INTERROGATORY: What is your name, age, and occupation?

SECOND INTERROGATORY: State what your occupation was in February, March, April and May, 1907.

THIRD INTERROGATORY: Do you remember the loading of the German ship "Schwarzenbek" at Millside, Fraser River, in the months of March, April and May, 1907?

FOURTH INTERROGATORY: If you shall state in answer to the foregoing interrogatory that you remember the loading of said vessel, state what, if any, connection you had therewith.

FIFTH INTERROGATORY: If in answer to the preceding interrogatory you shall state that you were either the manager or the foreman of the stevedoring firm that loaded said vessel at said time, [36] state when you were first notified by the charterer of the selection or nomination of your firm for that purpose.

SIXTH INTERROGATORY: State whether or not you were on the 13th day of March, 1907, ready and fully equipped to perform said service.

SEVENTH INTERROGATORY: State, if you know, on what date the trimming of the vessel

(Deposition of A. J. Stewart.)

in accordance with the instructions of the surveyor, and the rigging of her cargo was completed and concluded.

EIGHTH INTERROGATORY: When did you first have a conversation with the master of said vessel upon the subject of the loading of his vessel, and what, if anything, took place between you at said time.

NINTH INTERROGATORY: What was the vessel doing at the time you had said conversation?

TENTH INTERROGATORY: On what day did the master of said vessel first request of you to render any services to said vessel, and what was the nature of said request?

ELEVENTH INTERROGATORY: Was there at said time any custom or usage on the Pacific Coast Northern ports with reference to who shall perform the labor of rigging the vessel to take in lumber?

TWELFTH INTERROGATORY: If in answer to the preceding interrogatory you shall say there was, or is, such a custom, state what the same is.

THIRTEENTH INTERROGATORY: How long have you been engaged in said business in Northern ports?

FOURTEENTH INTERROGATORY: State whether or not the master of the vessel paid the stevedoring firm extra for the labor furnished to assist in rigging up the vessel to receive said lumber.

(Deposition of A. J. Stewart.)

FIFTEENTH INTERROGATORY: State when the rigging of said vessel for said purpose was concluded. [87]

SIXTEENTH INTERROGATORY: When did the master deliver notice of his readiness to receive the cargo.

SEVENTEENTH INTERROGATORY: When did the work of loading said vessel commence.

EIGHTEENTH INTERROGATORY: Was the vessel at any time ready to receive cargo before said last named date.

NINETEENTH INTERROGATORY: Was the vessel at any time preceding said date delayed by want of readiness upon the part of the contracting stevedores to commence the loading of said vessel.

TWENTIETH INTERROGATORY: Examine the document now exhibited to you and marked Respondent's Exhibit "A," and state whether or no that is the notice served by the master upon the mill on March 21, 1907, and state how and why you recognize the same as being such notice so delivered as aforesaid. Have the same identified by the signature of the commissioner and have it annexed to your deposition and returned herewith.

TWENTY-FIRST INTERROGATORY: Did the master at any time after commencing said loading stop and discontinue the work of loading said vessel; if so, state the date when he so stopped it, and how long he continued to so prevent the loading of said vessel.

(Deposition of A. J. Stewart.)

TWENTY-SECOND INTERROGATORY: If the master stated to you why he stopped said loading, state what he said upon the subject.

TWENTY-THIRD INTERROGATORY: When the master subsequently proceeded with the loading did he do so with or without insisting upon the objections he made to continuing the loading when he first stopped it.

TWENTY-FOURTH INTERROGATORY: When did he resume the loading, and what, if any, cargo did he take on board upon such resumption of the loading.

TWENTY-FIFTH INTERROGATORY: During the period of the loading of said vessel, state whether or no the longshoremen or stevedore's men engaged upon said loading entered upon a strike, and if so, [88] give the date upon which they entered upon said strike, and their reasons for the same.

TWENTY-SIXTH INTERROGATORY: When said strike occurred, what, if anything, was done toward proceeding with the said loading, and how long did said method of loading continue.

TWENTY-SEVENTH INTERROGATORY: When was said strike settled and adjusted, and when was said loading continued by the use of stevedores.

TWENTY-EIGHTH INTERROGATORY: During the time of said strike, what, if any, effort was made to secure and obtain other labor with which to resume said loading, and what, if any-

(Deposition of A. J. Stewart.)

thing, prevented such efforts from becoming effectual.

TWENTY-NINTH INTERROGATORY: Did the master of said vessel, during the time of such strike, give any expression of his views of the liability of the charterer to load said vessel during the term of said strike, and if so, what did he say upon the subject.

THIRTIETH INTERROGATORY: Were the contracting stevedores during all the time consumed in loading the said vessel fully equipped to perform the said duty, with the exception of the disability imposed upon them by said strike?

THIRTY-FIRST INTERROGATORY: Did the master at any time interfere with or delay the progress of said loading so as to occasion unnecessary delay, and if so, state the causes and the length of time you were so delayed.

THIRTY-SECOND INTERROGATORY: When was the loading completed.

THIRTY-THIRD INTERROGATORY: Were there an holidays included in the period from March 22d to May 15th, and if so, what were they, and on what dates did they occur.

THIRTY-FOURTH INTERROGATORY: Was there any occasion from the time said master gave notice of readiness to receive cargo, until said vessel was completely laden, when the mill failed to supply [89] the ship with sufficient lumber within reach of the vessel's tackle to permit of loading at the normal rate per day.

(Deposition of A. J. Stewart.)

THIRTY-FIFTH INTERROGATORY: Who paid the contracting stevedores for their services as stevedores on said vessel.

THIRTY-SIXTH INTERROGATORY: If either Mr. Renny, Mr. Carter, Mr. Fowle or Mr. Stewart be not present to give their testimony, state, if you know, where he is.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent.

Receipt of a copy of the within Direct Interrogatories is hereby admitted this 17th day of February, 1914.

ANDROS & HENGSTLER,

Proctors for Libelant.

[Endorsed]: Filed Feb. 20, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [90]

[Cross-interrogatories to be Administered to A. J. Stewart et al.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

MARTIN H. A. ELVERS and FREDERIC A. E. ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

(Deposition of A. J. Stewart.)

CROSS-INTERROGATORIES to be administered to A. J. Stewart, W. P. Fowle, W. C. W. Renny and Henry Carter, witnesses to be produced, sworn and examined on behalf of the respondent in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States in and for the Northern District of California, Division One, wherein Martin H. A. Elvers and Frederic A. E. Zimmer are libelants, and W. R. Grace & Co., a corporation, is respondent: (All objections to the form, materiality or relevancy of the Direct Interrogatories to said witnesses by respondent are reserved.)

First: If, in answer to the "Fifth" Interrogatory, you have stated the time when you were first notified by the charterer of the selection or nomination of your firm for the loading of the ship "Schwarzenbek," kindly state, in what form the notice was given; if it was given in writing or by wire, attach to this deposition the original notice received by you.

Second: If you were connected with the loading of said vessel at said time, kindly state if you had previously been employed by charterer for the purpose of loading its vessels in Puget Sound, and how often; also state whether you had previously loaded lumber from Millside in other vessels.

Third: Please state where you were on the 13th day of March, 1907; also when you first arrived at Millside, Fraser River. [91]

Fourth: Please describe the geographical location of

(Deposition of A. J. Stewart.)

Millside, Fraser River; state the nature of the place, whether a town, a city, or subdivision of a town; also give its distance from the following places: The mouth of the Fraser River; the city of Vancouver; Royal Roads; Port Townsend; also please state how long it took, with the connections existing during the first half of March, 1907, to travel from any of the places mentioned to Millside.

Fifth: When did the said ship arrive at Millside, Fraser River, and when did she moor at the loading berth alongside the wharf at Millside?

Sixth: Please state, if you know, if there was any stevedore at Millside on the day when said ship arrived; also state on what day the stevedores who loaded the ship arrived at Millside, and what were the names of the foremen or managers in charge of the longshoremen who loaded the ship.

Seventh: If you answer the "Seventh Interrogatory," please explain what you understand by "the rigging of her cargo."

Eighth: If you answer the "Eighth Interrogatory," please state where said conversation took place, and when you first went board the ship.

Ninth: If, in answer to the "Twelfth Interrogatory," you state what the custom or usage is on the Pacific Coast Northern Ports with reference to who shall perform the labor of rigging the vessel to take in lumber, please explain if the same customs or usages apply to deep water lumber carriers as to coastwise vessels.

Tenth: Please specify what labor is necessary in

(Deposition of A. J. Stewart.)

order to rig a vessel to take in lumber, either at side-loading, or at end-loading, and whether this is labor ordinarily performed by stevedores.

Eleventh: Was the ship "Schwarzenbek" loaded over her side, or over her stern, in March, April and May, 1907? [92]

Twelfth: Please state the name of the mill, and the name of the owner thereof, at whose wharf the loading took place.

Thirteenth: If you state in your answers what stevedoring firm loaded the vessel, please state whether it was the same or another firm that rigged the vessel for loading the lumber. Please state also what kind of rigging was actually put up in this case to place the lumber on board; and when the rigging of said vessel for said purpose commenced.

Fourteenth: If you answer the "Eighteenth Interrogatory," kindly explain how you understand the words "ready to receive cargo," in said interrogatory.

Fifteenth: If you answer the "Nineteenth Interrogatory," kindly state whom you understand to be "the contracting stevedores" in said interrogatory; also kindly explain what you understand by the words "want of readiness" in said interrogatory.

Sixteenth: If you answer the "Twentieth Interrogatory," please state what you understand by the words "served upon the mill" in said interrogatory, and state what happened with reference to

(Deposition of A. J. Stewart.)

said exhibit "A" in your own presence, and within your own sight and hearing.

Seventeenth: If you answer the said "Twentieth Interrogatory," please state what other notices passed between the master and the mill, especially prior to said March 21, 1907, and state the terms of such notice to the best of your recollection. Attach all written notices given by the master to you, or to any representative of the mill, with their dates, and have the same identified by the signature of the commissioner.

Eighteenth: When did the master of the ship first ask you, either verbally or in writing, to begin the work of rigging or loading the ship? What did he say to you, as to his ship having waited to be loaded, and what did you answer. [93]

Nineteenth: What was the first day on which the mill had sufficient lumber ready for loading the said ship?

Twentieth: Kindly attach to this deposition all letters and notices which you, either as representative of the stevedores, or as representative of the mill, or in any other capacity, received from the master on any day during March, 1907.

Twenty-first: Kindly state all conversations, requests, orders or communications which passed between representatives of the stevedores and representatives of the mill, in your presence, during March, 1907, with reference to said ship.

Twenty-second: Please state, if you know, whether the same stevedoring firm which loaded said ship,

(Deposition of A. J. Stewart.)

had ever previously loaded deep-water lumber ships at the same wharf?

Twenty-third: Please attach to this deposition any and all letters, communications, notices, and wires which were exchanged between you or your firm or employers, and any other person whatsoever, respecting the loading of the said ship.

Twenty-fourth: Do you affirm under oath that the letters, notices, wires and communications mentioned in your answers to the preceding questions are all the communications which were *exchange* between you or your firm or employers, on the one hand and the charterers, master or stevedores concerned in the loading of the ship, on the other hand?

Twenty-fifth: If you answer the "Twenty-first Interrogatory" in the affirmative, please state the reason given by the master for so interfering.

Twenty-sixth: Please add to the list of holidays which you may have given in answer to the "Thirty-third Interrogatory," a list of the holidays, if any, which occurred between March 2d, and March 22d. [94]

Twenty-seventh: If you answer the "Thirty-fourth Interrogatory," please explain what you understand by "the time said master gave notice of readiness to receive cargo"; also, please state what was "the normal rate per day" referred to in said interrogatory; also please state how you know the quantity of lumber supplied by the mill during the said period.

(Deposition of A. J. Stewart.)

Twenty-eighth: If you answer the "Twenty-fifth Interrogatory," please state the source of your knowledge of the facts.

ANDROS & HENGSTLER,
Proctors for Libelants.

Due service and receipt of a copy of the within Cross-interrogatories is hereby admitted this 19th day of February, 1914.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Respondent.

[Endorsed]: Filed Feb. 19, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [95]

**[Redirect Interrogatories to be Administered to
A. J. Stewart et al.].**

*In the District Court of the United States, in and for
the Northern District of California, Division
One.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

REDIRECT INTERROGATORIES to be administered to A. J. Stewart, W. P. Fowle, W. C. W. Renny and Henry Carter, witnesses to be produced, sworn and examined on behalf of the respondent in

a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States in and for the Northern District of California, Division One, wherein Martin H. A. Elvers and Fred-eric A. E. Zimmer are libelants, and W. R. Grace & Co., a corporation, is respondent:

FIRST REDIRECT INTERROGATORY.

A typographical error appearing in the Seventh Direct Interrogatory, which is made the subject of the Seventh Cross-interrogatory, I now ask you to state, if you know, on what date the trimming of the vessel in accordance with the instructions of the Surveyor, and the rigging of the vessel to receive her cargo was completed and concluded.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent.

Receipt of a copy of the within redirect interrogatories is hereby admitted this 20th day of February, 1914.

ANDROS & HENGSTLER,

Proctor for Libelants.

[Endorsed]: Filed Feb. 20, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [96]

(Commission to Notary Public at Victoria, B. C.)

The President of the United States of America, to
Any Notary Public, at Victoria, British Colum-
bia, Canada, Greeting:

KNOW YE, that we, in confidence of your pru-
dence and fidelity, have appointed you commissioner,
and by these presents do give you full power and au-

thority diligently to examine upon corporal oath or affirmation, before you to be taken, and upon the interrogatories, redirect and cross-interrogatories hereunto annexed: A. J. Stewart, W. P. Fowle, W. C. W. Renny, Henry Carter, as witnesses on the part of the respondent in a certain cause now pending undetermined in the District Court of the United States, in and for the Northern District of California, wherein Martin H. A. Elvers and Frederick, A. E. Zimmer are libelants and W. R. Grace & Co., a corporation, is respondent.

And we do hereby require you ~~the said Notary Public~~ before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to the clerk of the District Court of the United States, in and for the Northern District of California, at the city of San Francisco, State of California, as soon as may be convenient after the execution of this commission; and that you return the same, when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

WITNESS, the Honorable M. T. DOOLING, Judge of the District Court of the United States of America, for the Northern District of California, this 20th day of February, in the year of our Lord one thousand nine hundred and fourteen and of our Independence the 138th.

[Seal]

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

[Endorsed]: Opened and Filed as per Stip. June 6, 1914. W. B. Maling, Clerk. C. W. Calbreath, Deputy. Opened and Filed as per Stip. and Order. Mar. 25, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [97]

[Minutes of Hearing—Tuesday, June 9, 1914.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 9th day of June, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 13,980.

MARTIN H. A. ELVERS et al.,

vs.

W. R. GRACE & CO., a Corporation.

This cause this day came on regularly for hearing. Golden Bell, Esq., and Louis T. Hengstler, Esq., appeared on behalf of libelants, and Nathan H. Frank, Esq., and Irving H. Frank, Esq., appeared on behalf of respondent. Mr. Bell and Mr. N. H. Frank stated to the Court their respective views of this cause, Mr. Bell then introduced in evidence certain exhibits which were filed and marked respectively Libelants' Exhibits 1 and 2, and then introduced the depositions of Friedrich Flindt and F. Unruh, which was marked Libelants' Exhibit 3. Mr. Bell then called

Louis T. Hengstler, who was duly sworn and examined on behalf of the libelants, and introduced certain exhibits, which were filed and marked respectively Libelants' Exhibits 4, 5, 6, 7 and 8, and thereupon rested the case of the libelants. Mr. N. H. Frank introduced in evidence the depositions of A. J. Stewart and C. W. Renny and called Edward T. Ford, who was duly sworn and examined on behalf of respondent, and introduced certain exhibits, which were filed and marked respectively Respondent's Exhibits "A," "B," "C," "D" and "E," and thereupon rested the defense of the respondent. On motion of Mr. Bell and consent of Mr. Frank, the [98] Court granted libelants permission to amend the libel filed herein. The Court then ordered cause submitted on briefs, by consent, to be filed. [99]

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Amended Libel for Demurrage.

To the Honorable MAURICE T. DOOLING, Judge
of the United States District Court for the
Northern District of California:

The amended libel of Martin H. A. Elvers and

Frederic A. E. Zimmer against W. R. Grace & Co., the permission of said Court having been obtained to the filing of said amended libel, for a cause of contract, civil and maritime, alleges:

I.

That at all the times herein mentioned libelants were and now are doing business in the city of Hamburg, Empire of Germany, as copartners under the firm name and style of Knohr & Burchard, Nfl., and were and now are the owners of the steel ship called the "Schwarzenbek"; and that, at all of said times, respondent was, and now is, as libelants are informed and believe, a corporation organized and existing under the laws of the State of Connecticut, and doing business in the city of San Francisco, said Northern District of California.

II.

That on or about the 16th day of August, 1906, in the city of London, England, the owners of said steel ship, Messrs, Knohr & Burchard Nfl., libelants herein, by a written charter-party, chartered to respondent the said steel ship, in and by which charter-party the whole of said ship was chartered unto said respondent for a voyage from a mill or loading place on Puget Sound, or in British Columbia not north of Burrard's Inlet, as might be [100] directed by respondent, to Calloa direct; and said respondent engaged by said charter-party to furnish the said vessel for said voyage a full cargo of sawn lumber and/or timber as therein specified. And it was further provided by said charter-party that orders as to loading mill should be given within 48 hours, Sun-

days and legal holidays excepted, after notification to charterers or their agents in San Francisco of arrival of vessel at Port Angeles, Port Townsend or Royal Roads, failing which lay days to count. And it was further provided by said charter-party that said respondent should be allowed for the loading of said vessel lay days as follows: Thirty (30) working lay days for loading (not to commence before 1st February, 1907, unless with charterer's consent), to commence twenty-four hours after vessel is at loading place satisfactory to charterers, inward cargo and/or unnecessary ballast discharged and ready to receive cargo, master having given written notice to that effect. And it was further agreed by said charter-party that for each and every day's detention by the fault of respondent or agents said respondent should pay to libelants demurrage at the rate of three pence sterling per register ton per day. That a true copy of said charter-party is hereunto annexed, marked exhibit "A," and made a part hereof.

III.

That thereafter, to wit, on or about the 2d day of March, 1907, said ship arrived at Royal Roads and her master on said day gave notice to respondent charterers of her arrival thereat, which notice was received by said respondent charterers at the hour of 4:30 P. M. on the 4th day of March, 1907; that no order or orders whatever as to loading mill were given within 48 hours thereafter; that on the 6th day of March, 1907, at the hour of 5:45 P. M., said respondent charterers, in response to said notice of

said master, wired the master of said ship as follows:—"We will load your ship [101] millside," which wire was thereafter received by said master; that said wire of said respondent charterers did not designate or direct to which millside said vessel should proceed, nor at what time said vessel should proceed thereto; that thereafter said master wired said respondent charterers a second time, and thereafter, and on March 7, 1907, received the following wire from said respondent charterers, to wit, "Millside Frazer River"; that said ship thereafter proceeded to and was at said designated loading place, with her inward cargo and/or unnecessary ballast completely discharged, and was ready to receive her cargo under said charter-party; and her master gave written notice of said facts and said readiness on the 13th day of March, 1907; and that the lay days for the loading of the cargo of said ship, pursuant to the terms of said charter-party, should have begun on the 7th day of March, 1907, and should have ended on the 12th day of April, 1907.

IV.

That notwithstanding said libelants have performed all the conditions of said contract of charter-party, and said ship was ready to receive her cargo, and respondent had notice of the arrival of said ship and 24 hours' notice thereof, pursuant to the terms of said charter-party, and said ship then and there remained at the direction and disposal of said respondent, and notwithstanding there was no remissness nor fault on the part of said libelants, yet the said respondent, by its own default, did not load

the said ship within the thirty working lay days in said charter-party agreed upon, but, contrary to the terms of said charter-party, said respondent delayed said ship until the 15th day of May, 1907, thereafter.

V.

That libelants, by the acts and defaults of respondent as *afore* became entitled to demand from respondent demurrage for thirty-three (33) days at the rate of 3d per registered ton per day, [102] amounting to the sum of Three Thousand Seven Hundred and Sixty-two 91-100 Dollars (\$3,762.91), over and above all just deductions.

VI.

That on or about the said 15th day of May, 1907, the master of said ship, on the demand of charterers, but reserving the rights and claims of libelants on account of respondent's breach of the charter-party as aforesaid by duly made protest, issued bills of lading to said charterers, to wit, respondent, wherein and whereby said respondent or assigns were mentioned as consignees of said cargo, but which said bills of lading contained no reference to the demurrage previously incurred. That said bills of lading are in the possession or under the control of respondent, and out of the possession and control of these libelants, and that libelants pray for the production, by respondent, of the original bill of lading for greater certainty in the premises.

VII.

That notwithstanding respondent has been requested to pay the said sum of \$3,762.91, the demurrage aforesaid, respondent has refused and still re-

fuses to pay the same or any part thereof.

VIII.

The copy of the charter-party annexed to the original libel is hereby expressly referred to and made a part hereof as exhibit "A."

IX.

That all and singular the premise are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE libelants pray that a monition or citation, according to the practice of this Honorable Court in Admiralty and maritime cases, may issue against the said respondent, and that it be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment [103] of the demurrage aforesaid with costs, and that the libelants may have such other and further relief in the premises as in law and justice they are entitled to receive.

ANDROS & HENGSTLER,

Proctors for Libelants.

Northern District of California,—ss.

Louis T. Hengstler, after being duly sworn, deposes: I am the proctor for libelants. Libelants in this cause are absent from this District, to wit, in Hamburg, Germany. That the source of deponent's knowledge is the documents and information derived from libelants, the admissions of respondent, the evidence admitted at the trial of said cause, and that deponent verily believes the facts in this amended libel stated to be true.

LOUIS T. HENGSTLER.

Subscribed and sworn to before me this 10th day of June, 1914.

[Seal]

LEORA HAIL,

Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the within Amended Libel is hereby admitted this 11th day of June, 1914.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Respondent.

[Endorsed]: Filed Jun. 11, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [104]

In the District Court of the United States, in and for the Northern District of California, Division One.

No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E. ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Exceptions to Amended Libel for Demurrage.

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States in and for the Northern District of California, Division One:

The Exceptions of W. R. Grace & Co., a Corporation, to the amended libel of Martin H. A. Elvers and

Frederic A. E. Zimmer vs. W. R. Grace & Co., a Corporation, in a cause of contract, civil and maritime, alleged:

I

That the charter-party provides that the bills of lading should be signed "without prejudice to this charter-party," and that said vessel should have a lien on the cargo for demurrage, it being understood that all and any liability of the charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions of demurrage or otherwise to be settled with the consignees, the owners and captain looking to their lien on the cargo for this purpose

That by reason of the foregoing, the said amended libel does not state a cause of action against these respondents.

II.

That it is not alleged in said Amended Libel that the said alleged failure to load the vessel within the time in said charter-party provided, was occasioned by the fault of the said respondents [105] or their agents.

WHEREFORE, these respondents pray that said amended libel may be dismissed, and for their costs herein.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Respondents.

Receipt of a copy of the within exceptions to

amended libel is hereby admitted this 1st day of July, 1914.

ANDROS & HENGSTLER,
Proctor for Libelants.

[Endorsed]: Filed Jul. 1, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [106]

*In the District Court of the United States, in and for
the Northern District of California, Division
One.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Notice of Motion to Strike Exceptions from Record.

To W. R. Grace & Co., a Corporation, Respondent
Herein, and to Nathan H. Frank, Esq., and
Irving H. Frank, Esq., Its Proctors:

You and each of you will please take notice that on Tuesday, the 7th day of July, 1914, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above court, Postoffice Building, Seventh and Mission Streets, city and county of San Francisco, State of California, proctors for libelants herein will move the above court to strike from the files and records in the above-entitled cause, the exceptions of respondent to

the amended libel on file herein; that said motion will be made upon the following grounds, to wit:

1. That said exceptions to the amended libel are in the identical language of the exceptions to the original libel herein on file, and present precisely the same issues of the law as were presented by the exceptions to the original libel. That the new matter added by the amended libel to the matter contained in the original libel in no manner changed the effect of the original libel in any of the particulars to which the exceptions to the amended libel are directed; that the exceptions to the original libel, after due consideration by the Honorable John J. DeHaven, when Judge of this Honorable Court, upon elaborate briefs submitted [107] by both libelants and respondents, overruled said exceptions to the original libel, and respondent thereafter answered the said libel.

2. That the present exceptions of respondent represent an attempt to have the same questions heretofore passed upon by this Honorable Court again considered, after said cause has been tried, and after libelants have filed their opening brief upon the merits; that said exceptions are wholly frivolous, and interposed for the purpose of further delaying the decision of said cause upon its merits, and unnecessarily represent matters to this Court which it has heretofore considered and passed upon.

WHEREFORE libelants pray that said exceptions to said amended libel be stricken from the files and records herein.

Dated July 2, 1914.

ANDROS & HENGSTLER,
GOLDEN W. BELL,

Proctors for Libelants.

Receipt of a copy of the within Notice of Motion
is hereby admitted this 2d day of July, 1914.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Respondent.

[Endorsed]: Filed Jul. 2, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [108]

**[Order Denying Motion to Dismiss Exceptions to
Amended Libel and Denying Motion Overruling
Exceptions Thereto, etc.]**

At a stated term of the District Court of the United
States of America for the Northern District of
California, First Division, held at the court-
room thereof, in the City and County of San
Francisco, on Saturday, the 11th day of July,
in the year of our Lord, one thousand nine hun-
dred and fourteen. Present: The Honorable
M. T. DOOLING, Judge.

No. 13,980.

MARTIN H. A. ELVERS et al.

vs.

W. R. GRACE & CO.

The motion to dismiss respondent's exceptions to
the amended libel this day came on regularly for
hearing. Louis T. Hengstler, Esq., appeared on be-

half of libelants, and in support thereto, and Irving H. Frank, Esq., appeared on behalf of respondents and in opposition to said motion. After hearing proctors for both parties, the Court ordered that said motion be, and the same is hereby, denied. Mr. Hengstler then made a motion overruling the exceptions to said amended libel, which was likewise denied by the Court. Further ordered that the claimant file its brief on or before August 11th, 1914. [109]

*In the District Court of the United States in and for
the Northern District of California, Division
One.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Answer to Amended Libel.

To the Honorable the District Court of the United States in and for the Northern District of California:

The answer of W. R. Grace & Co., a Corporation, to the amended libel of Martin H. A. Elvers and Frederic A. E. Zimmer, for a cause of contract, civil and maritime, alleges:

I.

Answering unto article I of said amended libel,

and particularly unto the allegation therein that the said libelants were, and are, doing business in the city of Hamburg, in the Empire of Germany, as co-partners under the firm name and style of Knohr & Burchard, Nfl., and were, and are, the owners of the steel ship called the "Schwarzenbek," this respondent is ignorant, so that it can neither admit nor deny the same, wherefore it calls for proof thereof.

II.

Answering unto article III in said amended libel, this respondent admits that on the 4th day of March, 1907, the master of said vessel wired the said respondent as follows: "'Schwarzenbek' arrived wire instructions," which said telegram was received by said respondent at 4:30 P. M.; that on the 6th day of March following, at 5:45 P. M., the said respondent wired the said master as [110] follows: "We will load your ship at Millside." That thereafter to wit, on March 8th, 3:55 P. M., the said respondent received a further telegram from said master, as follows: "Want definite instructions when to proceed to Millside"; to which said respondent replied on said date, at 4:40 P. M. "Proceed to Millside as soon as you are ready." Said respondent denies that on the 2d day of March, the said master gave notice to the respondent of the arrival of said vessel at Royal Roads; and further denies that the respondent charterer in response to any notice of arrival from said master wired the said master of said ship otherwise than as hereinbefore admitted, or that thereafter said master wired said respondent charterer the second time otherwise than as hereinbefore

admitted; and further denies that on the 7th day of March, 1907, the said master received any telegram from said charterers otherwise than as hereinbefore admitted; and said respondent further denies that on the 13th day of March, 1907, said ship was at said designated loading place with her inward cargo and/or unnecessary ballast completely discharged, or was ready to receive her cargo under said charter-party, or that her master then gave written notice of said facts or of said readiness; and further denies that the lay days for the loading of the cargo of said ship pursuant to the terms of said charter-party should have begun on the 7th day of March, 1907, or at any day before the 22d day of March, 1907, or should have ended on the 12th day of April, 1907, or on any day before the 17th day of May, 1907.

III.

Answering unto article IV of said amended libel, this respondent denies that said libelants have performed all of the conditions in said charter-party; and further denies that said ship was ready to receive her cargo, or that respondent had notice of the arrival of the ship, or had 24 hours notice thereof pursuant [111] to the terms of said charter-party, or that said ship then or there remained at the direction or disposal of said respondent otherwise than as hereinbefore admitted. Said respondent further denies that there was no remisness or fault on the part of said libelants; and further denies that said respondent by its own default, or otherwise, or at all, did not load said ship within the 30 working lay days in said charter-party agreed upon; and

further denies that contrary to the terms of said charter-party, or otherwise, or at all, said respondent delayed said ship until the 15th day of May, 1907, thereafter, or otherwise or at all delayed said vessel contrary to the terms of said charter-party.

Said respondent alleges that on the 1st day of April, 1907, the master of said vessel, of his own motion, and without cause, did stop, cease and discontinue the further loading of said vessel, and refused to accept any delivery of cargo, and continued to so refuse up to and until the forenoon of the 3d day of April, 1907, whereby three days were lost to said respondent in the loading of said vessel.

Respondent further alleges that March 29th and April 1st, were respectively holidays at said loading port, and were not working lay days for said loading; and further alleges that on the 23d day of April, 1907, the stevedores' crew engaged in the loading of said ship combined in a strike and ceased work, and did coerce and threatened other workmen assisting in the loading of said vessel, and that said strike continued until the 11th day of May, 1907, on which day said stevedores' crew again commenced to work and completed the loading of said work on the 15th day of May, 1907.

That under the terms of said charter-party, the said lay days would have expired on the 17th day of May, 1907, and not otherwise. [112]

IV.

Answering unto article V of said amended libel, this respondent denies that by the acts or defaults of respondent, or otherwise, or at all, the said libel-

ants became entitled to demand from the said respondent demurrage for 33 days at the rate of 3d. per register ton per day, or at any rate whatsoever, amounting to the sum of Three Thousand Seven Hundred and Sixty-two and 91/100 (3,762.91) Dollars, over and above all just deductions, or that they became entitled to demand demurrage for any other time or sum whatsoever, or at all.

V.

Answering unto article VII of said amended libel, this respondent denies that it has been requested to pay the said sum of Three Thousand Seven Hundred and Sixty-two and 91/100 (3,762.91) Dollars, the demurrage aforesaid, but admits that it has been requested to pay the sum of Two Thousand Nine Hundred and Seventy-four and 72/100 (2,974.72) Dollars.

VI.

Answering unto article IX of said amended libel, this respondent denies that all or singular the premises in said amended libel alleged are true, but admits that the same are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, respondent prays that said amended libel may be dismissed, and for its costs herein, and for such other and further relief as in law and justice it may be entitled to.

NATHAN H. FRANK,

Proctor for Respondent. [113]

State of California,

City and County of San Francisco,—ss.

Edward T. Ford, being duly sworn, deposes and

says: That he is an officer of W. R. Grace & Co., a Corporation, Respondent in the above-entitled cause, to wit, the sub-manager thereof; that he has read the foregoing answer to amended libel, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

EDWARD T. FORD.

Subscribed and sworn to before me this 31st day of August, 1914.

[Seal]

GEO. H. PROBASCO,

Notary Public in and for the said City and County of San Francisco, State of California.

Receipt of a copy of the within Answer to Amended Libel is hereby admitted this 31st day of August, 1914.

ANDROS & HENGSTLER,

Proctor for Libellant.

[Endorsed]: Filed Aug. 31, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [114]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the City and County of San Francisco, on Monday, the 17th day of May, in the year of our lord one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, Judge.

No. 13,980.

MARTIN H. A. ELVERS et al.,
vs.

W. R. GRACE & CO., a Corp.

(Order Sustaining Exceptions to Amended Libel.)

In this cause the Court ordered that the exceptions to the amended libel heretofore filed and submitted herein, be, and the same are hereby sustained. [115]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corp.

Respondents.

**(Opinion and Order Sustaining Exceptions to
Amended Libel.)**ANDROS & HENGSTLER and G. W. BELL,
Esq., Proctors for Libelants.NATHAN H. FRANK, Esq., and IRVING H.
FRANK, Esq., Proctors for Respondents.

This is an action on the part of the shipowners against the charterers for demurrage at the port of loading.

The charter contains the following provisions:

“For each and every days detention by the fault of party of the second part (charterers) or agents, they agree to pay to said party of the first part, demurrage at the rate of three pence sterling per register ton per day.”

“Bills of lading to be signed for pieces with the clause ‘All on board to be delivered,’ and at any rate of freight shippers may desire without prejudice to this charter; but if at a lower rate than provided in charter, difference to be paid in cash at port of loading, less commission, interest and insurance.”

“Vessel to have a lien on cargo, for all freight, dead freight and demurrage, it being understood that all and any liability of the charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions, whether of demurrage, or otherwise, to be settled with the consignees, the Owners and Captain looking to their lien on the cargo for this purpose.”

The provision for the payment of demurrage by the charterers applied [116] alike to delays in loading and delays in discharging.

As the libel is against the charterers *in personam*, exceptions have been filed to it, on the ground that it states no cause of action against respondents, the charterers, because of the cesser clause in the charter, but that libelants' only remedy is an action *in rem* against the cargo. The action was, however, fully tried, and these exceptions are taken to an

amended libel filed at or about the close of the trial. Similar exceptions taken to the original libel were overruled by the former Judge of this court. The high regard which I have for the late Judge De Haven's learning has caused me to hesitate long before deciding that the exceptions to the amended libel are well taken. But a careful study of the English and American cases in which the effect of so-called "cesser clauses" has been passed upon has led me to the conclusion that under the provisions of this charter the cesser clause is effective. In the first place there is nothing in the nature of the subject matter which would prevent the parties from entering into any agreement satisfactory to themselves concerning the question of demurrage. The charter-party might well have provided that no demurrage at all should be charged for delay, or it might provide as here that demurrage should be paid, but that after the ship was laden the owner should be given a lien upon the cargo, and should look to it for the purpose of securing such payment, and that "all and any liability of the charterers under the charter shall cease and determine as soon as the cargo is on board." If there be nothing in the charter itself which renders it impossible or even difficult for the ship to secure and enforce the lien upon the cargo which the charter gives, and such lien would be commensurate with the liability of the charterers for demurrage, there is no reason why an Admiralty Court should not hold the parties to the contract which they have made. There does not seem to me to be any [117] question of public

policy involved which would prevent the enforcement of the contract as it is written, or permit its enforcement otherwise than as written. It is, after all, only the construction of the whole charter that is here involved. An early clause in the charter provides for the payment by charterers of demurrage for delays through their fault either in loading or discharging the vessel beyond the lay days allowed for such purpose. A later clause declares "vessel to have a lien on cargo for all freight, dead freight and demurrage, it being understood that all and any liability of the charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions, whether of demurrage or otherwise, to be settled with the consignees, the owners and Captain looking to their lien on the cargo for this purpose." Is the lien here created commensurate with the liability of the charterers provided for in the antecedent clause? I cannot escape the belief that it is so commensurate with the charterers' liability, unless there be some other provisions of the charter which permits the charterers to destroy or render valueless the lien so created. I find no such provision.

In *Clink vs. Radford*, 1 Q. B. 625, it was said by one of the Judges:

"In my opinion, the main rule to be derived from the cases as to the interpretation of the cesser clause in a charter-party is that the Court will construe it as inapplicable to the particular breach complained of, if by construing it otherwise the shipowner would be left unprotected in

respect of that particular breach, unless the cesser clause is expressed in terms that prohibit such a conclusion. In other words, it cannot be assumed that the shipowner, without any mercantile reason, would give up by the cesser clause rights which he had stipulated for in another part of the contract.”

Another one said: [118]

“There is no doubt that the parties may, if they choose, so frame the clause as to emancipate the charterer from any specified liability without providing for any terms of compensation to the shipowner; but such a contract would not be one we should expect to see in a commercial transaction. The cesser clauses, as they generally come before the courts, are clauses which couple or link the provisions for the cesser of the charterer’s liability with a corresponding creation of a lien. There is a principle of reason which is obvious to commercial minds, and which should be borne in mind in considering a cesser clause so framed, namely, that reasonable persons would regard the lien given as an equivalent for the release of responsibility, which the cesser clause in its earlier part creates, and one would expect to find the lien commensurate with the release of liability.”

And the third added:

“The rule that we are *prima facie* to apply to the construction of a cesser clause followed by a lien clause appears to me to be well ascertained. That rule seems a most rational one, and it is

simply this, that the two are to be read, if possible, as coextensive. If that were not so, we should have this extraordinary result: there would be a clause in the charter-party the breach of which would create a legal liability, there would then be a cesser clause destroying that liability, and there would then come a lien clause which did not recreate that liability in anybody else."

And in a later case *Hansen vs. Harrold*, 1 Q. B. 617, speaking of the foregoing, it is said:

"It seems to me that this reasoning has not been and cannot be answered. Therefore the proposition is true, that where the provision for cesser of liability is accompanied by the stipulation as to lien, then the cesser of liability is not to apply in so far as the lien, which by the charter-party the charterers are able to create, is not equivalent to the liability of the characters. Where, [119] in such a case, the provisions of the charter-party enable the charterers to make such terms with the shippers that the lien which is created is not commensurate with the liability of the charterers under the charter-party, then the cesser clause will only apply so far as the lien which can be exercised by the shipowner is commensurate with such liability.

The Supreme Court in *Crossman vs. Burrill*, 179 U. S. 100, quoting the foregoing laid down the following as the true rule: "In short, in a charter-party which contains a clause for cesser of the liability of the charterers, coupled with a clause creat-

ing a lien in favor of the shipowner, the cesser clause is to be construed if possible, as inapplicable to a liability with which the lien is not commensurate." The Court held the clause of the charter there under consideration to be ineffective because the lien created by the charter was not commensurate with the charterer's liability. But in that case the charter contained also the further provision "bills of lading to be signed as presented, without "prejudice to this charter," and as the bills of lading as presented contained no reference to the payment of demurrage, nor any reference to the terms of the charter other than those concerning freight and average, the Court held that the indorsees of the bills of lading were not bound by the charter provisions giving the vessel a lien upon the cargo for demurrage, and that the rights of the shipowners against the indorsees depended altogether upon the contract created by the bills of lading, except so far as that contract referred to the charter-party. It seems to me that the provision "bills of lading to be signed *as presented*" and the presentation of such bills containing no provision for the payment of demurrage made a case such as is mentioned in *Hansen vs. Harrold, supra*, "Where, in such case, the provisions of the charter-party enable the charterers to make such terms with the shippers that the lien which is created is not [120] commensurate with the liability of the charterers under the charter-party, then the cesser clause will only apply so far as the lien which can be exercised by the shipowner is commensurate with such liability."

In the case at bar, however, there is no provision in the charter-party which would enable the charterers to make such terms with the shippers, or with the owners as would render the lien created by the charter at all uncommensurate with the charterers' liability for demurrage, either at the port of loading or at the port of discharge.

There is nothing in this charter-party which would prevent the master from preserving in the bill of lading the lien given by the charter for "all freight, dead freight and demurrage." The fact that he did not do so seems to me to be a false quantity, tending only to confuse the real question, which is the construction of the charter-party itself. For otherwise, even if it were conceded that this charter-party does absolve the charterers from the payment of demurrage, the master could defeat this absolution by failing to preserve the lien in the bill of lading. But the charter-party is an instrument complete in itself and when the parties thereto enter into certain agreements, it should not be in the power of the master to render any of those agreements abortive through the medium of a bill of lading. If the charter-party itself and within its own four corners has the effect of rendering the lien created by it uncommensurate with the liability of the charterers under a stipulation for demurrage then a cesser clause in such charter-party will not absolve the charterers from such liability. But if the charter-party itself gives a lien commensurate with the charterers' liability the cesser clause will be given the full effect which its terms require. And this seems to me to be

the only conclusion to be drawn from the adjudicated cases both [121] English and American. Many of these cases give to the cesser clause full efficiency as absolving the charterers from all liability whether incurred at the port of loading or at the port of discharge. Others make this clause only effective as to liabilities accruing at the port of discharge, holding the charterers responsible for all liability incurred before the cargo is fully on board. Still others give no effect whatever to the cesser clause for the reason that the Court finds that the lien given by the charter is not commensurate with the liability of the charterers also created thereby. But in all the cases these various conclusions result from the consideration and construction of particular charter-parties, according to the terms used in creating the liability, in providing for its cessation, and in creating the lien in lieu thereof.

It is a vexed and perplexing question, but taking all the terms of the charter-party under consideration here, I am of the opinion that the reasonable construction requires that effect be given to the cesser clause, and that the remedy of the libelants is not under the charter by "action against the charterers at all on the charter, after the ship is fully loaded, but that they are to have as a remedy for their freight, dead freight and demurrage, nothing but a lien on the cargo." *Sanguinetti vs. Pacific Steam Navigation Co.*, L. R. 2 Q. B. D. 238.

The exceptions to the amended libel are therefore sustained. May 17th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 17, 1915. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [122]

*In the District Court of the United States, in and for
the Northern District of California, Division
One.*

At a stated term of the District Court of the United
States in and for the Northern District of Cali-
fornia, held at the courtroom thereof, in the
Postoffice Building at said City and County of
San Francisco, State of California, on Thursday,
the third day of June, 1915. Present: Hon.
MAURICE T. DOOLING, District Judge.

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Final Decree.

The above-entitled cause having come on for hear-
ing, and the said cause having been tried upon its
merits, the said libelants applied for leave to file an
amended libel to conform to the proofs, and said
application having been granted, thereupon the said
libelants filed and amended libel, to which the said
respondent excepted, upon the grounds, among
others, that said amended libel did not state facts
sufficient to constitute a cause of action against this

respondent; and said exceptions having been argued and submitted by the proctors for the respective parties, and due deliberation being had in the premises;

It is now ORDERED, ADJUDGED AND DECREED that said exceptions be, and the same are, hereby sustained, and the said amended libel be, and the same hereby is dismissed with costs to the respondent herein.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Jun. 3, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [123]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E. ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Decree Dismissing Cross Libelant's Libel.

The exceptions of respondent to the original libel having been sustained and the original libel having been heretofore dismissed,

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the cross-libel be, and it is hereby, dismissed.

Done in open court this 14th day of June, 1915.

M. T. DOOLING,
Judge of said Court.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [124]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Notice of Appeal.

To W. R. Grace & Co., a Corporation, Respondent
in the Above-entitled cause, and to Messrs.
Nathan H. Frank and Irving H. Frank, Its
Proctors and to W. B. Maling, Clerk of the
United States District Court for the Northern
District of California, First Division:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE that the libelants in the above-
entitled cause hereby appeal to the United States
Circuit Court of Appeals for the Ninth Circuit from
the final decree of the District Court of the United
States for the Northern District of California, sit-
ting in admiralty, entered in said cause on the 3d day
of June, 1915.

DATED October 13, 1915.

LOUIS T. HENGSTLER,
GOLDEN W. BELL,

Proctors for Libelants.

Receipt of a copy of the within notice of appeal is hereby admitted this 13th day of October, 1915.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Respondent.

[Endorsed]: Filed Oct. 13, 1915. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [125]

*In the District Court of the United States for the
Northern District of California, First Division,*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants and Appellants,
vs.

W. R. GRACE & CO., a Corporation,
Respondent and Appellee.

Assignment of Errors.

Come now the libelants and assign as error committed by the District Court of the United States, in the proceedings, the order and the decree dismissing the amended libel, the following:

1. The District Court erred in sustaining and in not overruling the exceptions to the amended libel.
2. The District Court erred in concluding, holding and deciding that the amended libel does not state

a cause of action against said respondent, and in not concluding, holding and deciding that said amended libel does state a cause of action against respondent.

3. The District Court erred in concluding, holding and deciding that because of the "cesser clause" contained in the charter-party upon which the amended libel is founded, the libelants' only remedy was or is an action in rem against the cargo of the chartered vessel "Schwarzenbek"; and in concluding, holding and deciding that, because of said "cesser clause," libelants have no remedy in personam against respondent. [126]

4. The District Court erred in concluding, holding and deciding that the libelants had or have, as a remedy for their damage resulting from the detention of their vessel, nothing but a lien on the cargo of the chartered vessel.

5. The District Court erred in concluding, holding and deciding that libelants had or have no action against respondent as charterer, on the charter-party, and in not concluding, holding and deciding that libelants had and have such an action against respondent.

6. The District Court erred in concluding, holding and deciding that the libelants had or have no action against the respondent as consignee of the cargo of the chartered vessel or as the indorsee of the bills of lading for said cargo, and in not concluding, holding and deciding that libelants had and have such an action against respondent.

7. The District Court erred in concluding, hold-

ing and deciding that a lien was given or created by the cesser or other clause in the charter-party, or in any manner whatsoever, upon the cargo of said vessel, for liability incurred by the detention of the vessel, and in not concluding, holding and deciding that no lien ever arose or was created therefor.

8. The District Court erred in concluding, holding and deciding that libelants had a lien upon the cargo of said vessel which was or is commensurate with the liability of the respondent under the charter-party or otherwise, and in not holding and deciding that if any lien upon said cargo was or is given by the charter-party, or otherwise, such lien was and is not commensurate with the liability of respondent.

9. The District Court erred in concluding, holding and deciding that the bills of lading issued for the cargo of said vessel did not prejudice the charter-party and libelant's right [127] to demurrage or damages, and in not holding that the bills of lading did prejudice the charter-party and libelants' said rights.

10. The District Court erred in concluding, holding and deciding that the cesser clause in the said charter-party, construed as limiting libelants' remedy to a lien upon the cargo of said vessel, and as depriving them of any remedy in personam against respondent, was and is not invalid and void as contrary to public policy; and in not holding and deciding that said cesser clause, so construed, was and is invalid and void as contrary to public policy.

11. The District Court erred in concluding, deciding and holding that the cesser clause in the

charter-party was or is effective, and in not concluding and holding that it was and is ineffective.

12. The District Court erred in the construction placed by it upon the cesser clause in the charter-party.

13. The District Court erred in not concluding, holding and deciding that all of the allegations contained in the amended libel were and are true.

14. The District Court erred in not concluding, holding and deciding that the libelants were and are entitled to recover from the respondent demurrage or damages for thirty-three (33) days, at the rate of three (3) pence sterling per registered ton per day, or \$3,762.91, and in not rendering and entering a decree in favor of libelants for that amount, together with interest thereon from the 15th day of May, 1907, and libelants' costs of suit.

15. If the District Court did not err in not concluding, holding and deciding that the libelants were and are entitled to recover from the respondent demurrage or damages for thirty-three (33) days, and in not rendering and entering a decree therefor, as aforesaid, said Court erred in not concluding, holding and deciding that libelants were and are entitled to recover from the respondent [128] demurrage or damages for twenty-six (26) days at the rate of three (3) pence sterling per registered ton per day, or \$2,964.72, and in not rendering and entering a decree in favor of libelants for that amount, together with interest thereon from the 15th day of May, 1907, and libelants' costs of suit.

16. The District Court erred in not concluding,

holding and deciding that libelants performed all of the terms and conditions of the charter-party on their behalf to be performed, fully and in every respect.

17. The District Court erred in not concluding, holding and deciding that, under the charter-party, lay days began with and including the seventh (7th) day of March, 1907, and ended with the twelfth (12th) day of April, 1907.

18. If the District Court did not err in not concluding, holding and deciding that, under the charter-party, lay days began with and including the seventh (7th) day of March, 1907, and ended with the twelfth (12th) day of April, 1907, said Court erred in not concluding, holding and deciding that, under the charter-party, lay days began with and including the fourteenth (14th) day of March, 1907, and ended with the nineteenth (19th) day of April, 1907.

19. The District Court erred in not concluding, holding and deciding that the days of detention by default of respondent began to run against respondent with and including the thirteenth (13th) day of April, 1907, and continued to run to and including the fifteenth (15th) day of May, 1907.

20. If the District Court did not err in concluding, holding and deciding that the days of detention by default of respondent began to run against respondent with and including the thirteenth (13th) day of April, 1907, and continued to run to and including the fifteenth (15th) day of May, 1907, said court erred in not concluding, holding and deciding that said days of detention began to run against re-

spondent with and including the twentieth (20th) day of April, 1907, [129] and continued to run to and including the fifteenth (15th) day of May, 1907.

21. The District Court erred in not concluding, holding and deciding that the respondent, wholly by and because of the fault of respondent and its agents, and without any fault upon the part of libelants or their agents, wrongfully used and detained said vessel, contrary to the terms of said charter-party, for a period from and including the thirteenth (13th) day of April, 1907, to and including the fifteenth (15th) day of May, 1907.

22. If the District Court did not err in not concluding, holding and deciding that the respondent, wholly by and because of the fault of respondent and its agents, and without any fault upon the part of libelants or their agents, wrongfully used and detained said vessel, contrary to the terms of the charter-party, for a period from and including the thirteenth (13th) day of April, 1907, to and including the fifteenth (15th) day of May, 1907, said Court erred in not concluding, holding and deciding that the respondent, wholly by and because of the fault of respondent and its agents, and without any fault upon the part of libelants or their agents, wrongfully used and detained said vessel, contrary to the terms of the charter-party, for a period from and including the twentieth (20th) day of April, 1907, to and including the fifteenth (15th) day of May, 1907.

23. The District Court erred in not concluding, holding and deciding that the master of said vessel at no time stopped, ceased or discontinued the load-

ing of said vessel of his own motion or without cause; and that said master at no time of his own volition or without cause refused to accept delivery of cargo thereon; and that any and all suspensions in the loading of said vessel were wholly due to the fault of respondent and its agents, and not to any fault upon the part of libelants or their agents.

24. The District Court erred in not concluding, holding and deciding that on or about the fifteenth (15th) day of May, 1907, the [130] master of said vessel, on the demand of respondent, but reserving all of the rights and claims of libelants, on account of the respondent's breach of the charter-party in the respects enumerated in the amended libel herein, by duly made protest, issued bills of lading to said respondent, wherein and whereby said respondent or assigns were mentioned as consignees of said cargo, but which bills of lading contained no reference to the detention or demurrage previously incurred; and that said bills of lading are in the possession and under the control of respondent and out of the possession and control of libelants, and were not produced by respondent at the trial, although demand was made in said amended libel, and in the original libel, for the production thereof at the trial.

25. The District Court erred in not concluding, holding and deciding that any delay due to the alleged strike, referred to in respondent's answer was, and is, wholly immaterial in that it occurred, if at all, after the lay days allowed to respondent for loading had expired.

26. The District Court erred in not awarding and

decreeing to libelants the relief prayed for in said amended libel.

Dated: San Francisco, California, February 23, 1916.

ANDROS & HENGSTLER,
GOLDEN W. BELL,

Proctors for Libelants and Appellants.

[Endorsed]: Receipt of a copy of the within assignment of errors is hereby admitted this 23d day of February, 1916, reserving all rights.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Respondent.

Filed Feb. 23, 1916. W. B. Maling, Clerk. By
T. L. Baldwin, Deputy Clerk. [131]

(Libelants' Exhibit "2.")

W. R. GRACE & CO.,
New York, San Francisco,
Lima, Callao, Valparaiso,
Santiago, Concepcion.

GRACE BROS. & CO., LIMITED,

London Agents.

LUMBER

1 THIS CHARTER PARTY, made and concluded upon in the City of London this 16th day of August, one thousand nine hundred and Six, BETWEEN MESSRS. KNOHR & BURCHARD NFL., for and on behalf of the owners of the Steel ship called the "SCHWARZENBEK," of the burden of 1877 tons or thereabouts, register measurement, now on passage to Santa Rosalia,

Lawther,
Latta
& Co.,
London.

of the first part, and Messrs. W. R. GRACE & CO. San Francisco of the second part,

10 WITNESSETH, that the said party of the first part, in consideration of the covenants and agreements hereinafter mentioned, to be kept, and performed by the said party of the second part, does covenant and agree on the freighting and chartering of the whole of the said vessel unto the said party of the second part, for a voyage from a Mill or loading place on PUGET SOUND, or in British Columbia not north of Burrard's Inlet, as may be directed by Charterers, to

Howard
Houlder
& Partners,
Ltd.,
Ship
Brokers,
London,

Also at
Glasgow,
Liverpool,
Cardiff,
Barry Port,
Talbot,
Greenock,
and
New York.

Callao direct

or to a direct port within said range, at *Charters'* option, orders to be given on signing Bills of Lading. Charterers to have the privilege of loading vessel at two Mills, but same must be in the same country, they paying the extra cost of towage, if any, and time used in so moving to count as lay days.

20 The said vessel shall be kept tight, staunch, strong and every way fitted for such a voyage, and receive on board for the aforesaid voyage, the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from said parties of the second part, or their agents.

23 The said party of the second part do engage to furnish the said vessel for the voyage aforesaid, a full cargo of SAWN LUM-

BER and/or TIMBER of such lengths and sizes as can be taken through vessel's hatchways (and bow and stern ports, if any). Lengths not shorter than sixteen feet, except at Charterer's option. No lumber to be cut by ship without written authority from the Charterers.

26 Vessel to have the privilege of loading a deckload, not endangering safety of the cargo, paying the extra insurance on same. Cargo on deck to consist of the largest sizes of rough lumber unless otherwise directed by Charterers.

28 Broken stowage, if required, to be furnished by Charterers, at their option, in lengths not shorter than twelve feet, paying half freight thereon, failing which owners to have the privilege of loading same on ship's account.

30 Orders as to loading Mill to be given within forty-eight hours, Sundays and legal Holidays excepted, after notification to Charterers or their Agents in San Francisco of arrival of vessel at Port Angeles, Port Townsend or Royal Roads, failing which lay days to count.

32 In case of fire or accident at the Mill where vessel is ordered to load, Charterers to have the privilege of ordering the vessel to another Mill on Puget Sound or in British Columbia, pay the additional towage in-

curred, but lay days not to count during time occupied in moving.

- 34 The said party of the second part agrees to pay to said party of the first part, or Agents, for the charter or freight of said vessel during the voyage aforesaid, in manner following, that is to say:

Fifty Shillings (50)

for each thousand feet, board measure, delivered. If ordered to a direct port of discharge or if cargo be all discharged at port of call, the freight to be two shillings and six pence less per thousand feet.

- 43 Freight payable on the right and full delivery of cargo at final port of discharge, in good and approved Bills of Exchange on London, at 90 days sight, or in cash at current rate of exchange, at Charterer's option.

- 45 If discharge is required at more than one port sufficient cargo is to be left on board to enable the vessel to shift with safety, and vessel is not to be ordered to a port south.

- 52 Said party of the second part shall be allowed for the loading and discharging of said vessel at the respective ports aforesaid, lay days as follows: Thirty (30) working lay days for loading, not to commence before 1st Feby 1907 unless with Charterers consent, to commence twenty-four [132] hours after vessel is at loading place satisfactory to Charterers, inward cargo and/or unnecessary ballast discharged and ready

to receive cargo; Master having given written notice to that effect. Discharge to be given with dispatch according to the custom of the port of discharge at such safe wharf, dock or place as Charterers may direct, but at not less than 35000 feet B. M. per day. For each and every day's detention by the fault of party of the second part or agents, they agree to pay to the said first party of the first part demurrage at the rate of three pence sterling per register ton per day. Should the vessel be detained by the Master beyond the time herein specified, demurrage shall be paid to Charterers at the same rate and in the same manner. Cargo shall be received and delivered within reach of vessel's tackles where she can lie afloat.

60 Three days to be allowed Charterers' Agents for giving discharging orders at Port of Call.

61 Vessel to furnish, within five days after arrival at loading place, as ordered, a certificate from a Marine Surveyor of the San Francisco Board of Underwriters, that she is in proper condition for the voyage, and a further certificate in due course, that she is properly loaded. Should vessel fail to pass satisfactory survey and should she be detained more than ten days for repairs, to enable her to pass such survey, this charter to be void at Charterers' option, such option to be declared at the end of said ten days.

- 67 General Average, if any, as per York-Antwerp rules, 1890.
- 68 Cargo to be stowed under the Master's supervision and direction; Charterers' stevedore to be employed at current rates not exceeding \$1.10.
- 69 Bills of Lading to be signed for pieces with the clause—"All on board to be delivered," and at any rate of freight shippers may desire without prejudice to this Charter; but if at a lower rate than provided in Charter, difference to be paid in cash at port of loading, less commission, interest and insurance.
- 72 (Act of God, perils of the sea, fire, barratry of the master and crew, enemies, pirates, assailing thieves, arrest and restraint of princes, rulers and people, collisions, strandings and other accidents of navigation, even when occasioned by the negligence, default or error of judgment of the pilot, master, mariners, or other servants of the ship-owner, civil commotions, floods, frosts, storms, fire, strikes, lock-outs and stoppages (partial or otherwise) or accident at the mill, or on railways or docks; or strikes, lock-outs or stoppages (partial or otherwise) or any other hindrances or delays of whatsoever nature connected with the working, delivery or shipment of the cargo or any part thereof beyond the Charterers' or agents' control throughout the

charter always excepted).

- 78 Vessel to have a lien on cargo, for all freight, dead freight and demurrage, it being understood that all and any liability of the Charterers under this agreement shall cease and determine as soon as the cargo is on board; all questions, whether of demurrage or otherwise, to be settled with the Consignees, the Owners and Captain looking to their lien on the cargo for this purpose.
- 81 Should the vessel be compelled to put into any port or ports, the Master shall consign her to Charterers or their correspondents, paying them the usual commissions.
- 83 A sufficient amount for ship's ordinary disbursements at port of loading, say not exceeding — pounds sterling to be advanced by Charterers, on account of freight under this Charter Party subject to a charge of — per cent, to cover interest, insurance and commission; advance to be endorsed on Captain's copy of Charter Party and all the Bills of Lading.
- 87 A commission of five $3\frac{3}{4}$ per cent, on estimated amount of this Charter is due and payable to Messrs. W. R. Grace & Co. San Francisco on completion of loading, or should vessel be lost. Exchange at \$4.86 per £ sterling.
- 89 Vessel to be consigned to Charterers' agents at port of discharge inwards only,

paying them a commission of two and one-half per cent, on amount of freight under this Charter and usual agency not exceeding five guineas for transacting vessel's inward business. At Charterers' option the above commission of seven six and one half quarter per cent, is payable at port of lading. [133]

92 Vessel to be consigned outward to Charterers' agents on Puget Sound or in British Columbia, and inwards if in ballast, free of commission, paying them the usual fee for doing Custom House business, not to exceed twenty-five dollars. Vessel to clear at the Custom House in the name of Charterers.

94 In case the vessel does not arrive at Port of Call, or Mill as ordered by Charterers, on or before sundown of 31st March, 1907 the Charterers are to have the option of cancelling or maintaining this Charter; said option to be declared within forty-eight hours after arrival of vessel at Port of Call or Mill as above.

97 To the true and faithful performance of all the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators and assigns, and also the said vessel, freight, tackle and appurtenances and the merchandise to be laden

on board, each to the other, in the penal sum of amount of Charter.

IN WITNESS WHEREOF, we hereunto set our hands, the day and year first above written.

Signed in the Presence of Darsena Dueson, cargo at Callao to be paid by Receivers there.

Signed in the presence of

Messrs. W. R. GRACE & CO.,

San Francisco,

By authority of owners,

HOWARD HOULDER & PARTNERS, LTD.

(S) HOWARD HOULDER,

Director,

As Agents.

GRACE BROS. & CO., LTD.

(S) J. P. EYRE,

Managing Director,

As Agents, 16-8-06. [134]

(Libelants' Exhibit "3.")

U. S. Consulate General,

Oct. 19, 1910.

Hamburg, Germany.

**(Commission to Consul-General, at Hamburg,
Germany.)**

The President of the United States of America, to the Consul-General of the United States, at Hamburg, Germany, or Any Person Acting for or Designated by him:—Greeting:

KNOW YE, That we, in confidence of your prudence and fidelity, have appointed you Commis-

sioner, and by these presents do give you, and each of you, full power and authority diligently to examine upon their corporal oath or affirmation, before you to be taken, and upon the interrogatories hereunto annexed, FRIEDRICH FLINDT and F. UNRUH, as witnesses on the part of the libelant in a certain cause now pending undetermined in the District Court of the United States, in and for the Northern District of California, wherein MARTIN H. A. ELVERS and FREDERIC A. E. ZIMMER, are libelants, and W. R. Grace & Co., a corporation, is respondent.

And we do hereby require you, or either of you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to Jas. P. Brown, Clerk of the District Court of the United States, in and for the Northern District of California, at the City of San Francisco, State of California, as soon as may be convenient after the execution of this commission; and that you return the same, when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

WITNESS, the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States of America, for the Northern District of California, this fourth day of October, in the year of our Lord one thousand nine hundred and ten and of our independence the one hundred and 35th.

[Seal]

JAS. P. BROWN,

Clerk.

By M. T. Scott,

Deputy Clerk. [135]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Stipulation for Taking of Testimony (of Friederich
Flindt et al.).**

It is hereby stipulated by and between the parties hereto that the testimony of Friederich Flindt and F. Unruh may be taken upon oath at the City of Hamburg, Germany, before the Consul-General of the United States in said city, or any person acting for or designated by him when the depositions of said witnesses may be taken under this stipulation, without the issuance of a commission therefor, upon this stipulation, and upon the direct interrogatories served this date, and upon cross-interrogatories to be served within 20 days from this date; and that thereafter said depositions may be taken forthwith, and when taken, returned to the clerk of said court. When taken and returned, said depositions may be offered and read in evidence, subject to any and all objections thereto, except as to the method of taking said depositions.

Dated September 7th, 1910.

ANDROS & HENGSTLER,
Proctors for Libelants.
NATHAN H. FRANK,
Proctor for Respondent.

[Endorsed]: Filed Sep. 10, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [136]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Interrogatories to be Propounded to Friederich
Flindt, at Hamburg, Germany, on Libelants'
Behalf.**

1. What is your full name, age and occupation?
2. What was your occupation during the months of March, April and May, 1907?
3. If your answer to the preceding question is, that you were then the master of the German ship "Schwarzenbek," state who were then the owners of said ship, who were her charterers and where was said ship on March 4, 1907.
4. State what loading mill was designated by charterers after arrival of your ship at Royal Roads, Puget Sound, and when.

5. State generally what occurred between you, the mill and the charterer, relative to loading your ship, after your arrival at Royal Roads.
6. On what day did your ship arrive at the designated loading place?
7. If your answer to question 4, is that the designated loading place was "Millside," state as accurately as possible the exact time when, at "Millside," the "Schwarzenbek" 's inward cargo and unnecessary ballast were completely discharged; state also the exact time when she was ready to receive her cargo; state also when you gave notice of her readiness. [137]
8. If you are able to do so, join to this deposition a copy of the notice of readiness which you gave while at "Millside," and state how the said notice was communicated to charterer or the mill.
9. State whether or not, at the time of giving the notice of readiness mentioned in your answers to the two preceding questions, the "Schwarzenbek" was prepared and ready to take in lumber.
10. State in particular whether, at the time mentioned in the preceding question, the "Schwarzenbek" was rigged for taking in lumber.
11. If your answer to the preceding question is in the negative, explain the reason or reasons why the vessel was not then rigged for taking in lumber.

12. State what stevedore or firm of stevedores loaded the cargo.
13. State how it happened that the stevedore or firm mentioned in your last answer loaded the cargo.
14. State when the stevedore or stevedores mentioned arrived on the ship, and when they commenced to load the cargo.
15. State in detail the communications you had with the charterers relative to appointment or employment of stevedores.
16. State any facts, relative to the employment or work of the stevedores who loaded the ship, which have a bearing upon the time of the commencement of the actual loading.
17. State whether, on any working lay day after March 23, 1907, the loading of the ship was for any reason interrupted or stopped, and if so, state the cause of and reason for such interruption or stoppage, and state how long the interruption continued.
18. Do you know of any other matter, not yet stated by you, that may be material to the subject of this examination, and in [138] particular the fixing of the date when the lay days of the "Schwarzenbek" began under her charter party? If you do, set forth these matters fully.

ANDROS & HENGSTLER,
Proctors for Libelants. [139]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & Co., a Corporation,

Respondent.

**Interrogatories to be Propounded to F. Unruh, at
Hamburg, Germany, on Libelants' Behalf.**

1. What is your full name, age and occupation?
2. What was your occupation during the months of
March, April and May, 1907?
3. If your answer to the preceding question is, that
you were then the first officer of the German
Ship "Schwarzenbek," state who were then
the owners of said ship, who were her char-
terers and where was said ship on March 4,
1907.
4. State what loading mill was designated by
charterers after arrival of your ship at Royal
Roads, Puget Sound, and when.
5. State generally what occurred between you, the
mill and the charterer, relative to loading
your ship, after arrival at Royal Roads.
6. On what day did your ship arrive at the desig-
nated loading place?
7. If your answer to question 4 is that the desig-
nated loading place was "Millside," state as

accurately as possible the exact time when, at "Millside," the "Schwarzenbek's" inward cargo and unnecessary ballast were completely discharged; state also the exact time when she was ready to receive her cargo; state also when you gave notice of her readiness.

8. State whether or not, at the time of giving the notice of readiness mentioned in your answers to the two preceding [140] questions, the "Schwarzenbek" was prepared and ready to take in lumber.
9. State in particular whether, at the time mentioned in the preceding question, the "Schwarzenbek" was rigged for taking in lumber.
10. If your answer to the preceding question is in the negative, explain the reason or reasons why the vessel was not then rigged for taking in lumber.
11. State what stevedore or firm *or* stevedores loaded the cargo.
12. State how it happened that the stevedore or firm mentioned in your last answer loaded the cargo.
13. State when the stevedore or stevedores mentioned arrived on the ship, and when they commenced to load the cargo.
14. State in detail the communications you had with the charterers relative to appointment or employment of stevedores.
15. State any facts, relative to the employment or work of the stevedores who loaded the ship,

which have a bearing upon the time of the commencement of the actual loading.

16. State whether, on any working lay day after March 23, 1907, the loading of the ship was for any reason interrupted or stopped, and if so, state the cause of and reason for such interruption or stoppage, and state how long the interruption continued.
17. Do you know of any other matter, not yet stated by you, that may be material to the subject of this examination, and in particular the fixing of the date when the lay days of the "Schwarzenbek" began under her charter-party? If you do, set forth these matters fully.

ANDROS & HENGSTLER,
Proctors for Libelants.

Due service and receipt of a copy of the within interrogatories is hereby admitted this 8th day of September, 1910.

NATHAN & FRANK,
Proctor for Respondent.

[Endorsed]: Filed Sep. 10, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [141]

[Deposition of Fritz Karl Rudolph Unruh.]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

(Answers of Witness Unruh to Interrogatories.)

Deposition of Fritz Karl Rudolph Unruh, a witness sworn and examined under and by virtue of a commission issued out of the District Court of the United States, in and for the Northern District of California, in a certain cause therein depending between Martin H. A. Elvers and Frederic A. E. Zimmer, Libelants, and W. R. Grace & Co., a corporation, respondent.

FRITZ KARL RUDOLPH UNRUH, of the city of Hamburg in the German Empire, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:

1st. To the first interrogatory he saith:

My name is Fritz Karl Rudolph Unruh; I am thirty-five years of age, and follow the occupation of sea captain.

2d. To the second interrogatory he saith:

During the months of March, April and May,

1907, I was the chief officer of the German ship "Schwarzenbek."

ROBERT P. SKINNER, Commissioner. [142]

3d. To the third interrogatory he saith:

The owners of the "Schwarzenbek" were Messrs. Knohr & Burchard, Nachf., of Hamburg, Germany; the charterers were Messrs. W. R. Grace & Co., of San Francisco; the ship on the date named was at Royal Roads, Vancouver Island, in British Columbia.

4th. To the fourth interrogatory he saith:

Our captain received a cable instructing him to load at Millside, but upon exactly what date he received this instruction I am unable to state.

5th. To the fifth interrogatory he saith:

I had nothing to do with this matter, which was entirely the captain's business.

6th. To the sixth interrogatory he saith:

Our ship arrived at the designated loading place on March 11, 1907, at 2 o'clock P. M.

7th. To the seventh interrogatory he saith:

On the 12th of March, 1907, inward bound cargo and unnecessary ballast had been discharged at 6 o'clock P. M.; on that same date, at 6 o'clock P. M. the vessel was in her loading place and ready to receive cargo; notice of the readiness of the vessel to receive cargo was given on March 13th at about 12 o'clock, noon.

8th. To the eighth interrogatory he saith:

The ship was prepared and ready to take in lumber at 6 o'clock on the evening of the 12th of March, 1907.

9th. To the ninth interrogatory he saith:

The "Schwarzenbek" was ready and rigged for taking in lumber on the 12th of March, 1907, at 6 P. M., as far as we were able to rig the ship with our own crew. It is customary for the stevedores to bring their own crew and they admit of no interference with their work.

ROBERT P. SKINNER, Commissioner. [143]

10th. To the tenth interrogatory he saith:

We had rigged as far as we could.

11th. To the eleventh interrogatory he saith:

Captain Rennie, representing the stevedoring firm of McCabe & Hamilton, loaded the cargo.

12th. To the twelfth interrogatory he saith:

The firm next above mentioned got the contract for loading the cargo from Messrs. Bartlett & Co., of Port Townsend, Washington. Bartlett & Co. had orders from Messrs. Grace & Co.

13th. To the thirteenth interrogatory he saith:

The stevedores arrived at the ship on the 21st of March, 1907, and proceeded to set up their part of the rigging, a work which lasted about two hours. On the 21st of March, and when this was finished, the ship was ordered away from her mooring place by the manager of the mill, so that work could not begin. She was ordered to return to her loading place about three hours later, so that the work of loading actually began on the morning of March 22d, 1907.

14th. To the fourteenth interrogatory he saith:

I had nothing to do with this matter.

15th. To the fifteenth interrogatory he saith:

I have already stated what I know in regard to this matter.

16th. To the sixteenth interrogatory he saith:

The work of loading was interrupted on Monday, April 1st, on April 2d, and on April 3d we worked but half a day. April 1st was a holiday. April 2d, the stevedores would not work because the mill owners had thrown down on the landing place, mixed up with the other cargo, an excess of short stowage, on which ROBERT P. SKINNER, Commissioner. [144] only half freight rate is paid, and which the commander of the "Schwarzenbek" would not take in. The stevedores refused to throw it out, and we told them that we could not take it into the ship; whereupon they refused to work until the matter was adjusted. Work was resumed on April 3d, 1907, in the afternoon.

17th. To the seventeenth interrogatory he saith:

As far as I can say, the lay days should have commenced on the 13th day of March, because the ship had been surveyed by the surveyors, and she was in every way ready to take in cargo. That is all I can say.

F. UNRUH.

ROBERT P. SKINNER, Commissioner.

[**Certificate of Commissioner of Deposition of F. K.
R. Unruh.**]

GERMAN EMPIRE,

FREE AND HANSEATIC CITY OF HAMBURG,

Consulate-general of the

United States of America,—ss.

I, Robert P. Skinner, Consul-general of the United States of America, the commissioner named in said

commission, do hereby certify that the witness, Fritz Karl Rudolph Unruh, appeared before me, and after being duly sworn, his evidence was taken down, and read over, and corrected by him, after which he subscribed the same in my presence, on the 21st day of October, A. D. 1910, at my office in the city and State of Hamburg, Germany, and that proof has been made before me of the personal identity of said witness.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

[Seal] ROBERT P. SKINNER,
Commissioner for California in Hamburg, Germany.

[145]

[Deposition of Lars Friedreich Flindt.]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERIC A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

(Answers of Witness Flindt to Interrogatories.)

Deposition of Lars Friedrich Flindt, a witness sworn and examined under and by virtue of a commission issued out of the District Court of the United States, in and for the Northern District of California, in a certain cause therein depending between Martin H. A. Elvers and Frederic A. E. Zimmer,

libelants, and W. R. Grace & Co., a corporation, respondent.

LARS FRIEDRICH FLINDT, of the city of Hamburg in the German Empire, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:

1st. To the first interrogatory he saith:

My name is Lars Friedrich Flindt; I am 34 years of age, and am a sea captain.

2d. To the second interrogatory he saith:

Captain of the ship "Schwarzenbek."

ROBERT P. SKINNER, Commissioner. [146]

3d. To the third interrogatory he saith:

The owners of the ship were Knohr & Burchard, Nachf., of Hamburg, Germany; the charters were W. R. Grace & Co., of San Francisco; and the ship was at Royal Roads, B. C., on March 4, 1907.

4th. To the fourth interrogatory he saith:

Millside was designated on the 6th and 7th of March, 1907.

5th. To the fifth interrogatory he saith:

On arrival there no orders were found. I wired W. R. Grace & Co. for orders on March 2d, 1907, and received orders on March 6th, "Millside"; but I did not know which "Millside." I therefore wired a second time and on March 7th I received additional telegraphic instructions stating "Millside, Frazer River."

6th. To the sixth interrogatory he saith:

We arrived at Millside March 11, 1907, at 2 o'clock P. M.

7th. To the seventh interrogatory he saith:

We arrived March 11, and on March 12, having in the meantime discharged 50 tons of ballast by evening, the ship was ready to take in cargo on the 13th of March; between 11 and 12 o'clock on the morning of the 13th, I gave notice that we were ready to receive cargo.

8th. To the eighth interrogatory he saith:

The notice was presented verbally by myself and in writing to the manager of the mill. I am unable to present a copy of this notice at this time; it is in the copy book at home.

9th. To the ninth interrogatory he saith:

The ship was prepared and ready to take in lumber
ROBERT P. SKINNER, Commissioner. [147]
at the moment when notice of such readiness was communicated to the manager of the mill.

10th. To the tenth interrogatory he saith:

The ship was rigged so far as it was customary for a ship to be rigged for that purpose.

11th. To the eleventh interrogatory he saith:

We could do nothing more; all that had to be done beyond what was already done fell to the lot of the stevedore.

12th. To the twelfth interrogatory he saith:

Grace and Co., the charter-party, were to nominate the stevedore. These stevedores were Bartlett & Co., of Port Townsend, Washington.

13th. To the thirteenth interrogatory he saith:

Bartlett & Co. did not actually act as stevedores but they were appointed stevedores by Grace & Co., and they themselves sublet the contract to Messrs. McCabe and Hamilton, who performed the work.

14th. To the fourteenth interrogatory he saith:

The stevedores arrived on the ship on March 21, 1907, and started to rig up their gear on that date. They commenced to load on March 22d.

15th. To the fifteenth interrogatory he saith:

On arrival at Millside no stevedores came on board, nor could I find any on shore; I then wired W. R. Grace and Co. on March 13th to name a stevedore, but I received no reply. I wired again, then Grace and Co. replied to me "Bartlett, stevedore."

16th. To the sixteenth interrogatory he saith:

In my opinion the delay arose from the time lost in the appointment of stevedores and after the stevedores were appointed further time was lost in order to give time to the mill. There was not sufficient lumber to start with.

ROBERT P. SKINNER, Commissioner. [148]

17th. To the seventeenth interrogatory he saith:

The mill put a large quantity of short stowage material at our disposition, for which we only got half freight, and for this reason I would not take it. I would only take this material for full freight and the stevedores would not work it but ceased operations from April 2d to April 3d at midday, when work was resumed.

18th. To the eighteenth interrogatory he saith:

In my opinion the 1st of April does not count as a lay day as it was a holiday, being Easter Monday. The lay days which were stipulated in the charter expired on April 19th. The ship was loaded on May 15, 1907, this making 26 days demurrage. If Easter Monday were counted it would be 27th days. The

ship was passed by the underwriters' surveyors on March 13th, 1907.

F. FLINDT.

ROBERT P. SKINNER, Commissioner.

[Certificate of Commissioner to Deposition of L. F. Flindt.]

GERMAN EMPIRE,
FREE AND HANSEATIC CITY OF HAMBURG,
Consulate-general of the
United States of America,—ss.

I, Robert P. Skinner, Consul-general of the United States of America, the commissioner named in said commission, do hereby certify that the witness, Lars Friedrich Flindt, appeared before me, and after being duly sworn, his evidence was taken down, and read over, and corrected by him, after which he subscribed the same in my presence, on the 25th day of October, A. D. 1910, at my office in the city and State of Hamburg, Germany, and that proof has been made before me of the personal identity of said witness.

ROBERT P. SKINNER, Commissioner. [149]

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

[Seal]

ROBERT P. SKINNER,
Commissioner for California in Hamburg, Germany.
Deposition of 1966 words:

Fee No. 39:

First 500 words.....	\$10.00	Marks 42.40
For each succeeding 100		
words or fraction		
thereof 50 cents.....	7.50	Marks 31.80

Represented by fee		
stamps	\$17.50	Marks 74.20
Fee No. 40:		
First 100 words.....	\$.50	Marks 2.15
For each succeeding 100		
words or fraction		
thereof 25 cents.....	4.75	Marks 20.15
<hr/>		
(Paid to A. W. Pentland,		
copyist)	\$ 5.25	Marks 22.30
Total	\$22.75	Marks 96.50

Fee #818.

(Four Fee Stamps.)

(Seal)

(U. S. Consulate General)

(Oct. 26, 1910.)

(Hamburg, Germany.)

[Endorsed]: Opened and filed as per stipulation
Nov. 18, 1910. Jas. P. Brown, Clerk. By M. T.
Scott, Deputy Clerk. [150]

(Libelants' Exhibit "4.")

New York)	W. R. GRACE & CO.,	Valparaiso)
Lima)Peru	614 California St.,	Santiago)
Callao)	San Francisco.	Concepcion)Chile
Arequipa)	Cable Address: "Grace."	Valdivia)
La Paz)Bolivia		Iquique)
Oruro)	London Agents: GRACE BROTHERS	Antofagasta)
	& CO., LTD.	Mejillones)

San Francisco, Cal., Aug. 20th, 1908.

Mr. L. T. Hengstler,

Kohl Bldg., City,

Dear Sir:—

“SCHWARTZENBEK.”

As per your request we enclose herewith schedule

of lay days as sent our Lima friends in connection with Captain's claim for demurrage.

Yours very truly,

W. R. GRACE & CO.

Fraser River Sawmills
Ltd.
Now Fraser Lumber Mill
Co.

{ Apr. 15, 1909.
Bond of Indemnity
for \$2964.72 by
Fraser River Lum-
ber Co., Ltd.

Agree to defend action for
demurrage & for judg-
ment

{ McRay, Pres. Prin.
Craig, Treas.
McRay,
Craig,

Sureties

B/L sent by W. R. Grace to Frank (March 10, 1909.)

[151]

(Copy.)

W. R. GRACE & CO.,
San Francisco.

“SCHWARTZENBEK.”

March 3. Sunday.

4. Arrived Royal Roads.

6. We wired “We will load your ship Mill-
side.

8. Capt. wired “Want definite instructions
when to proceed to Millside.”

8. We wired “Proceed to Millside as soon
as you are ready.”

11. Capt. wired “Ready to load, nominate
stevedore.”

12. We wired “Bartlett Stevedore.”

12. Capt. wired “Ready load wire instruc-
tions stevedoring immediately.”

12. We wired "As wired this morning Bartlett Port Townsend will stevedore per Charter."
13. Capt. wired "Now Millside 3 days still awaiting stevedore. Will hold you liable all expense and delay."
13. Capt. wired "Bartlett"—"Ready but no stevedore here yet—advice."
14. We wired "Communicate with Bartlett—
We are not concerned in arrangement beyond nominate responsible stevedore who will load according charter."
14. Bartlett wired Capt.—"Capt. C. W. Renny will load your ship for us."
18. Capt. wired "Still waiting stevedore."
21. Vessel working ballast and rigging for cargo. Master notified mill ready to load.
22. Mill says rigging not completed until morning 22d; lay days commence 24 hours.

	Lay days
23. Lay days commence.	1
24. Sunday.	
25.	1
26.	1
27.	1
28.	1
29. Good Friday.	
Captain wired—"Mill putting on wharf	

timbers less than 16 ft.—I refuse to take unless full freight paid.”

30.

31. Sunday.

April 1. Easter Sunday.

Capt. stopped loading, refusing to take lengths under 16 ft. without having guarantee that ship would receive full freight.

Bartlett wired Capt.—“Your ship and Owners will be held responsible for any delay caused by your refusal to accept lumber under 18 feet as provided by charter at Charterer’s option.”

2. No work.

Capt. wired—“Work is stopped. No reply to my telegram. Will hold you responsible for delays and expenses.”

[152]

W. R. GRACE & CO.,

San Francisco.

Capt. wired later—“Will you full freight on short lengths under 16 feet except what ship orders.”

April 3. Capt. wired Bartlett—“Will charterers pay full freight on lengths under 16 ft. except what ship requires for stowage.

We wired—“Short lengths is required half rate—otherwise pays full freight.”

Bartlett wired Capt.—“Charterers will pay freight in accordance terms of Charter Party. Loading recommenced

in afternoon on same cargo Capt. had
previously refused.

	Lay days
4.	$\frac{1}{2}$
5.	1
6.	1
7. Sunday	
8.	1
9.	1
10.	1
11.	1
12.	1
13.	1
14. Sunday	
15.	1
16.	1
17.	1
18.	1
19.	1
20.	1
21. Sunday	
22.	1
23. Strike commenced	
24. "	
25. "	
26. "	
27. "	
28. Sunday	
29. Strike	
30. "	
May 1. "	
2. "	

3. "
4. "
5. Sunday
6. Strike
7. "
8. "
9. "
10. " [153]

W. R. GRACE & CO.

San Francisco.

	Lay days
May 11. Strike settled; loading resumed	1
12. Sunday	
13.	1
14.	1
15.	..1
	<hr/>
	26½ days
	<hr/>

[154]

COPY OF TELEGRAMS EXCHANGED WITH
CAPT. FLINDT, SHIP SCHWARZENBEK;

FROM Mar. 4th—4:30 P. M.

SCHWARZENBEK arrived wire instructions.

TO Mar. 6th—5:45 P. M.

We will load your ship at Millside.

FROM Mar. 8th—3:55 P. M.

Want definite instructions when to proceed to Millside.

TO Mar. 8th—4:40 P. M.

Proceed to Millside as soon as you are ready.

FROM 11th, rec'd. 12th—9:00 A. M.

Ship SCHWARZENBEK ready load, nominate stevedore.

TO Mar. 12th—10:30 A. M.

Bartlett stevedore.

FROM Mar. 12th—4:20 P. M.

SCHWARZENBEK ready load wire instructions stevedoring immediately.

TO Mar. 12th—4:30 P. M. ,

As wired this morning, Bartlett Port Townsend will stevedore per charter.

FROM Mar. 13th, rec'd. 14th—9:00 A. M.

SCHWARZENBEK now Millside 3 days still waiting stevedore. Will hold you liable all expense and delay incurred.

TO Mar. 14th—10:30 A. M.

Communicate with Bartlett. We are not concerned in the arrangement, beyond nominating responsible stevedore who will load according charter.

FROM Mar. 18th, rec'd 19th—9:00 A. M.

SCHWARZENBEK still waiting stevedore.

[155]

COPY OF CABLEGRAMS (TELEGRAMS) EX-
CHANGED BETWEEN BARTLETT & CO.
and MESSRS. CAPTAIN FLINDT OF GER.
SHIP "SCHWARZENBEK."

Seattle, Wash., June 1st, 1907.

New Westminster, B. C., Mar. 13, 1907.

Bartlett & Co.

Port Townsend, Wn.

Schwarzenbek ready but no Stevedore here yet,
Advise.

253 P. M.

FLINDT,

Master.

(Received by Bartlett & Co., Seattle, March 14th,
1907.)

Seattle, Wn., Mar. 15th, 1907.

Captain Flindt.

Ship "SCHWARZENBEK," Millside, B. C.,
via Westminster.

Captain C. W. Renny will load your ship for us.

BARTLETT & CO.

By Phone Millside, B. C., April 1st, 1907.

Bartlett & Co.,

Seattle, Wn.

SCHWARZENBEK. Captain has stopped loading, refusing to take lengths under sixteen foot without having guarantee that ship shall receive full freight for same.

H. D. HYLTON,

Inspector for W. R. Grace & Co.

Seattle, Wn., April 1st, 1907.

The Master Ship SCHWARZENBEK,

Millside, B. C.

Your ship and owners will be held responsible for any delay caused by your refusal to accept lumber under sixteen feet as provided by charter party at charterer's option.

BARTLETT & CO.,

Agents for W. R. Grace & Co. [156]

TELEGRAMS REGARDING SHIP "SCHWARZENBEK"—*continued.*

Recd. 4:30 P. M. Vancouver, B. C., Apr. 3, 1907.
Bartlett & Co.

Stevedores, Seattle, Wn.

Will charterers pay full rate of freight on short lengths under sixteen feet except what ship requires for broken stowage—answer immediately.

FLINDT,
Schwarzenbek.

Seattle, Wn., April 3d, 1907.

Captain Flindt:

Ship "SCHWARZENBEK," Vancouver, B. C.

Charterers will pay freight in accordance with terms of charterer's party.

BARTLETT & CO.

3:00 P. M. New Westminster, B. C.

April 25th, 1907.

Bartlett & Co.,

Room 6, Coleman Dock, Seattle, Wn.,

SCHWARZENBEK not loading, strike on.

H. D. HYLTON.

[Endorsed]: Filed June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [157]

(Libelants' Exhibit "5.")

Rec'd. Mar. 30, 1907.

Ans'd.

Millside, B. C., Mch. 23d, 1907.

Messrs. Bartlett & Co.

Colman Dock,

Seattle, Wn.

Gentlemen:—

The Ger. Ship "Schwarzenbek" began loading yes-

terday at 11 A. M. Order #402.

The Captain has so far refused to sign for any short stowage as the Mill Co. have not kept short lengths separate on wharf. I hardly think we will be able to get him to sign for very much. Please send me a copy of order #402. Will write again in few days.

Very Resp.

H. D. HYLTON. [158]

ORDER #402. "SCHWARZENBEK."

Millside, B. C., Mch. 31st, 1907.

Messrs. W. R. Grace & Co.

San Francisco, Cala.

Gentlemen,—

Have about 315 M. feet of Merch. and 110 M. feet of Select loaded on the Ger. Ship "Schwarzenbek." This lumber so far is averaging good both as to quality and manufacture. Have only loaded 5 M. feet short lengths (under sixteen feet) all of which the Ship has signed for.

The Mill Co. has given the Captain notice that short lengths must be taken on and I think that the Captain has already wired you regarding it. The Mill Co. has about 50 M. feet of short lengths already cut and there has been a great deal of complaint from both Mill People and Stevedores regarding the extra handling of Stowage. Mr. Fowle, the Mill Co. Supt. has not said much about it.

Very Resp.

H. D. HYLTON, [159]

ORDER #410—"SCHWARZENBEK."

Millside, B. C., April 11th, 1907.

Messrs. W. R. Grace & Co.

San Francisco, Cala.

Gentlemen:—

We have loaded this P. M. about 840 M. feet of lumber, 230 M. feet of which is select, the 1x6 being nearly out. In my last letter I advised you that the Mill Co. would mark the balance of the select lumber but they would only mark the balance of 11½x6 and not the 1x6 as they thought it was *to* near out to bother about the marking. During last week or so they have had poor logs and lumber while up to grade is not any better than it should be, however they are expecting another Raft soon. In my next letter I think I will be able to give more definite information as to the capacity of Ship. I do not believe that the Mill will be able to cut enough to keep up with the loading as they are working on several other Orders.

Very truly,

H. D. HYLTON. [160]

Rec'd Apr. 17, 1907.

Ans'd No.

ORDER #410—"SCHWARZENBEK."

Millside, B. C., Apl. 13th, 1907.

Messrs. W. R. Grace & Co.

San Francisco, Cala.

Gentlemen,—

We worked Ship only one hour today as we ran out of lumber this morning. There is about 20 M feet of long timbers on Dock which they are holding

for the Deck but Ship does not want them until the Tween Decks is filled up. The Mill has not cut very much for us today as their merchantable logs have not yet arrived. Expect to begin work again Monday morning.

Have about 245 M feet of the Select loaded. The lower Hold will hold about 1050 M feet. The Select is running a higher per cent clear than any that I have ever shipped. I can say nothing definite as to time of completing loading.

Very respectfully,

H. D. HYLTON. [161]

Rec'd Apr. 18, 1907.

Ans'd File.

Ex. F.

ORDER #410—"SCHWARZENBEK."

Millside, B. C., April 15th, 1907.

Messrs. W. R. Grace & Co.

San Francisco, Cala.

Gentlemen,—

In my last Saturdays report to you I reported total of 900 M feet loaded but according to corrected figures from Tallyman there was only 852 M feet. Begun work to-day at 1 P. M. and had wharf about cleaned up at quitting this evening. The Mill starts in to-night running one quarter overtime each day.

Very Respectfully,

H. D. HYLTON. [162]

Rec'd Apr. 25, 1907.

Ans'd file with papers.

ORDER #410—"SCHWARZENBEK."

Millside, B. C., Apl. 20th, 1907.

Messrs. W. R. Grace & Co.

San Francisco, Cala.

Gentlemen,—

We have on Ship 180 M feet of 1x6 Select and about 115 M feet of the 1½x6 also select.

In addition to the above have loaded 9 M feet of Short lengths—1x6 Select—as stowage and the Mill Co. expect to ship more as they have it piled separately on the Dock. The percentage of short lengths were out on the 1x6 Select before the last 9 M feet was loaded on Ship. She should carry somewhere near 1675 M as they will carry six inches more on Deck than usual. The Select still averages large per cent clear while the grade of Merchantable is not uniform as they are allowing some clear and select in this also. Have only worked about 36 hours this week as Mill has not been able to cut lumber but they did better last of the week as were on better logs.

Very Truly,

H. D. HYLTON.

Lima

R [163]

Phone 188.

P. O. Box 573.

THE WINDSOR.

P. O. Bilodeau, Proprietor

New Westminster, B. C. April 24th, 1907.

Messrs. Bartlett & Co.

Seattle, Wn.

We have loaded no lumber on Ship "Schwarzen-

bek" this week as the Mill did not have much ahead on Monday morning and the Stevedore worked men on Steamer "Georgia." Yesterday noon the Longshoremen struck and I have been advised that at their meeting in Vancouver last night there was no agreement reached. I will advise you as soon as work is resumed.

Very Truly,

H. D. HYLTON.

[Endorsed]: Filed June 9, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [164]

(Libelants' Exhibit "6.")

Grace Brothers & Co., Ltd., Ship "Schwarzenbek."
London.

COPY.

Vancouver, B. C., March 19th, 1907.

Capt. C. W. Rennie,
Vancouver.

London.
1208.

Dear Sir:—

With reference to the stevedoring of my vessel under Clause 68 of her Charter Party, it reads that the cargo is to be stowed under the master's supervision and direction, charterers stevedore to be employed not exceeding \$1.10. On my arrival at Millside I notified charterers, Messrs. W. R. Grace & Co., of San Francisco, who advised me that Bartlett of Port Townsend, would stevedore as per charter. I wired this gentleman, who in turn wired me, under date of 15th inst. that you would load ship for him.

Up to the time of writing nothing has been done towards stevedoring my vessel. I have been at my loading berth ready to receive cargo since the 12th inst. and I shall be obliged if you will advise me by return whether you intend to stevedore the vessel, if so, please state date on which you intend to start work, if not, I shall have to make other arrangements charging the charterers with all expenses I may have to go to.

Please give messenger reply to this by return, and oblige,

Yours very truly,

(Signed) F. FLINDT,

Master.

For true copy:

(S.) Knoehr & Burchard, Nfl.

[Endorsed]: Filed June 9, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [165]

(Libelants' Exhibit "7.")

Dres. BARTELS, von SYDOW, REME & RATJEN,

NOTARE.

HAMBURG.

——oOo——

(Notarial

(German Seal)

Revenue

Stamp.)

KNOW ALL MEN BY THESE PRESENTS that we the undersigned, MARTIN HERMANN ADOLPH ELVERS and FRIEDRICH AUGUST

EMIL ZIMMER, both of the City of Hamburg, in the Empire of Germany, ship owners, doing business in said city as a copartnership under the name and style of Knohr & Burchard Nfl., owner of the steel ship called the "Schwarzenbek," have made, constituted and appointed, and by these presents do make, constitute and appoint Louis T. Hengstler of the City and County of San Francisco, State of California, its true and lawful attorney, for it and in its name to prosecute its claim against the firm of W. R. Grace & Co. of San Francisco, for demurrage under a Charter of said ship "Schwarzenbek," dated August 16th, 1906, by action at law, suit in equity of admiralty, or otherwise, and to collect, receive, and upon the receipt thereof to give acquittances or other sufficient discharges for all sums of money, debts, accounts, and other demands whatsoever, due, owing, and payable to said Knohr & Burchard Nfl.

Giving and granting to its said attorney full [166]
239/09

power and authority to do and perform any and every act and thing whatsoever requisite and necessary to be done in the premises and hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of the terms of this instrument.

IN WITNESS THEREOF we have hereunto set

our hands and seals at Hamburg, this 22d of December, A. D. 1908.

A. ELVERS,

in firm of KNOHR & BURCHARD NFL. [Seal]

A. ZIMMER,

in form of KNOHR & BURCHARD NFL. [Seal]

No. of registry—22,945.

CITY AND STATE OF HAMBURG.

On this twenty-second day of December, A. D. one thousand nine hundred and eight, before me, Hans Rudolf Ratjen, Doctor of Laws, a Notary Public in and for this City, personally appeared Mr. Martin Hermann Adolph Elvers and Mr. Friedrich August Emil Zimmer, both of this city, ship owners, doing business in said city as a copartnership under the name and style of Knohr & Burchard Nfl., to me known to be the individuals described [167] in and who executed the foregoing instrument and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned in my presence.

IN WITNESS THEREOF I have hereunto set my hand and seal of office the day and year last above written.

[Notarial Seal]

DR. HANS RATJEN.

United States Consulate-General at Hamburg,—ss.
No. 1210.

I, Robert P. Skinner, Consul-General of the United States of America at Hamburg, do hereby certify that the seal and signature of Hans Rudolf Ratjen, Notary Public at Hamburg, to the instrument of

writing hereto annexed are true and genuine, and as such are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of Office, this 23d day of Dec., A. D. 1908.

[Seal]

ROBERT P. SKINNER,

United States Consul-General.

(Consular Service Stamp) [168]

HAMBURG. Dres. BARTELS, von SYDOW,
REME & RATJEN, NOTARE.

(Stempel) No. 943 3

(Abgabe)

(Hamburg)

Zwei M 50 r pr. 2 Expl.

den 18 Jan. 1908.

Truman.

(The following has been translated from Spanish, in accordance with order of Court, dated February 14th, 1916, a copy of which is included in this transcript.)

Register No. 58744.

In this free and hanseatic City of Hamburg on the seventeenth (17) day of January, nineteen hundred and eight, before me, George Adolf Reme, Doctor in jurisprudence, Notary Public, duly sworn as appears by his number and the undersigned witnesses, Mr. Theodore Oscke and Mr. Wilhelm Heller, residents of this city, personally appeared Friedrich August Emil Zimmer, Shipping Broker and Ship-owner residing in Altonas, over the age of majority, managing partner, personally responsible,

of the copartnership doing business in this City under the firm name of Knohr & Burchard, Nfl., as appears by the commercial registry of the Tribunal of Letters, Hamburg, which I have had before me and who I hereby certify is known to me to be the deponent and has the legal qualifications to obligate himself, and he deposed: that in the name of his said firm of Knohr & Burchard, Nfl., in Hamburg as owners of the German ship "Schwarzenbek," grants and confers their Power of Attorney, full, absolute, complete and sufficient as may be necessary or required by law, to the Embassy of the German Empire at Lima, Republic of [169] Peru or whomsoever may be acting for it, that it may judicially or extra judicially take care of all the rights, interests, claims and demands of the firm executing these presents, against Messrs. W. R. Grace & Company, Lima, and recover, demand and collect all sums due for demurrage relating to the ship "Schwarzenbek" and other expenses owing & due the grantors by said W. R. Grace & Company; to grant acquittances or extensions, give receipts, discharges and valid releases for all sums received.

In the event that said Attorney cannot settle these matters amicably, that it may be able to protect and defend the interests of grantors by all lawful means which may be necessary, acting as plaintiff or as defendant to ask for an inquiry, appoint Counsel and Defensors to appear before Court and, out of it, to have parties summoned to appear before competent Tribunals designated to conciliate, have favorable judgments executed, make requisitions,

petitions and citations or receive them, appeal, object, challenge, compromise, protest, prove, admit or refute the proofs of the adversary, to take oaths or require them, attach, prosecute attachments, or release attachments, ask for the sale and adjudication of property, terminate transactions & amicable settlements, nominate all kinds of appraisers, arbitrators or friendly adjusters, accept grants of property and do all things which may be necessary; for the authority which may be required, is hereby granted without limitation, together with free, full and general administration, with authority to substitute this Power of Attorney, wholly or in part and to revoke substitutions as often as it desires and lastly to do all things that shall be necessary for the interests of the grantors according to the laws obligating themselves to ratify & indemnify according to law. [170]

Done in Hamburg on the day and year hereinabove mentioned and the deponent has signed this Power of Attorney with the witnesses after having read and ratified its contents.

In witness whereof, I, the Notary, have signed these Presents and sealed them with my official Seal.

KNOHR & BURCHARD, NFL.

[Seal] G. A. REME.

THEO. OSCKE,

Witness.

W. HELLER,

Witness.

The Consul-General of Peru in Hamburg, certifies that the signature which precedes is the authentic

signature of Georg Adolf Reme, Notary Public of this City, and that he is in the actual exercise of the functions of his office.

In witness whereof, signs and seals these presents in Hamburg on the eighteenth day of January, nineteen hundred and eight.

Number of order, 9.

Number of tariff, 59.

Fees collected M. 8.00, \$2.00.

(Peruvian Consular Stamp) The Consul-General,
[Seal] JORGE CORRVAS. [171]
HAMBURG. Dres. BARTELS, von SYDOW,
REME & RATJEN, NOTARE.

(Stempel)

(Abgabe) No. 943

(Hamburg)

Duplicate.

Zwei M 50 r pr. 2 Expl.
den 18 Jan. 1908.

Truman.

Register No. 58745.

In this free and hanseatic City of Hamburg on the seventeenth (17) day of January, nineteen hundred and eight before me George Adolf Reme, Doctor in jurisprudence, Notary Public, duly sworn as appears by his number and the undersigned witnesses Mr. Theodore Oscke and Mr. Wilhelm Heller, residents of this city personally appeared Friedrich August Emil Zimmer, Shipping Broker and Shipowner residing in Altonas, over the age of majority, managing partner, personally responsible, of the co-partnership doing business in this city under the

firm name of Knohr & Burchard, Nfl., as appears by the commercial registry of the Tribunal of Letters, Hamburg, which I have had before me and who I hereby certify is known to me to be the deponent and has the legal qualifications to obligate himself, and he deposed: that in the name of his said firm of Knohr & Burchard, Nfl., in Hamburg as owners of the German ship "Schwarzenbek," grants and confers their Power of Attorney, full, absolute, complete and sufficient as may be necessary or required by law, to the Embassy of the German Empire at Lima, Republic of [172] Peru, or whomsoever may be acting for it, that it may judicially or extra judicially take care of all the rights, interests, claims and demands of the firm executing these presents, against Messrs. W. R. Grace & Company, Lima and recover, demand and collect all sums due for demurrage relating to the ship "Schwarzenbek" and other expenses owing and due the grantors by said W. R. Grace & Company; to grant acquittances or extensions, give receipts, discharges and valid releases for all sums received.

In the event that said Attorney cannot settle these matters amicably, that it may be able to protect and defend the interests of grantors by all lawful means which may be necessary, acting as plaintiff or as defendant to ask for an inquiry, appoint Counsel and Defensors to appear before Court and, out of it, to have parties summoned to appear before competent Tribunals designated to conciliate, having favorable judgments executed, make requisitions, petitions and citations or receive them, appeal, object, challenge,

compromise, protest, prove, admit or refute the proofs of the adversary, to take oaths or require them, attach, prosecute attachments, or release attachments, ask for the sale and adjudication of property, terminate transactions and amicable settlements, nominate all kinds of appraisers, arbitrators or friendly adjusters, accept grants of property and do all things which may be necessary; for the authority which may be required is, hereby granted without limitation, together with free, full and general administration, with authority to substitute this Power of Attorney, wholly or in part and to revoke substitutions as often as it desires and lastly to do all things that shall be necessary for the interests of the grantors according to the laws obligating themselves to ratify and indemnify according to law. [173]

Done in Hamburg on the day and year hereinabove mentioned and the deponent has signed this Power of Attorney with the witnesses after having read and ratified its contents.

In witness whereof, I, the Notary, have signed these Presents and sealed them with my official Seal.

KNOHR & BURCHARD, NFL.

[Seal]

G. A. REME.

THEO OSCKE,

Witness.

W. HELLER,

Witness.

The Consul-general of Peru in Hamburg, certifies, that the signature which precedes is the authentic signature of Georg Adolf Reme, Notary Public of this city, and that he is in the actual exercise of the functions of his office.

In witness whereof, signs and seals these presents
in Hamburg on the eighteenth day of January, nine-
teen hundred and eight.

Number of order, 10.

Number of tariff, 55.

Fees collected M. 8.00, \$2.00.

(Peruvian Consular Stamp.)

The Consul-general.

[Seal]

JORGE CORRVAS.

[Endorsed]: Filed June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [174]

(Libelants' Exhibit "8.")

KNOHR & BURCHARD, NFL.,

Inhaber: (A. Elvers.

(A. Zimmer.

Scotts Code 1896. A B C Code 1901.

Telegram-Adresse: Knohrhard, Hamburg.

Reederei-Abteilung.

(Flag)

Hamburg 11, den 26th May, 1910.

Naptunhaus.

Schiff: "SCHWARZENBEK."

eis. o. stahl.

Tons Schwergut.

4 M. Bark "Reinbek" ca. 4450

4 M. Bark "Schurbek" " 4000

4 M. Bark "Eilbek" " 3900

4 M. Bark "Schiffbek" " 3900

4 M. Bark "Wandsbek" " 3700

4 M. Bark "Barmbek" " 3350

Vollschiff "Schwarzenbek" " 3300

Vollschiff "Flottbek" " 3100

Vollschiff	“Tarpenbek”	.....	“	3000
Barkschiff	“Ellerbek”	.....	“	2550
4 M. Bark	“Goldbek”	.....	“	4350
4 M. Bark	“Fischbek”	.....	“	3800
Vollschiff	“Lasbek”	.....	“	3850
Vollschiff	“Steinbek”	.....	“	3700

Messrs. ANDROS & HENGSTLER,
San Francisco (Cal.),

Dear Sirs,

We duly received your favour of the 27. November 1909, regarding the case “Schwarzenbek”/W. R. Grace & Co., for demurrage claim, contents of which had our careful attention.

As we are since that date without any further news from your goodselves we should feel very much obliged to you by informing us, if there are any prospects for a prompt settlement of our claim.

Awaiting your further good news, we remain, Dear Sirs,

Yours Faithfully,
KNOHR & BURCHARD, Nfl.

(COPIst) [175]

KNOHR & BURCHARD NFL.

Reederei-Abteilung.

A B C Code 1901.

Telegramm-Adresse: Knohrhard, Hamburg.

(Flag)

Segler-Flotte.

eis. o. stahl.	Tons Schwergut.
4 M. Bark	“Reinbek” ca. 4450
4 M. Bark	“Jersbek” “ 4400
4 M. Bark	“Goldbek” “ 4350

4 M. Bark "Thielbek"	"	4350
4 M. Bark "Schurbek"	"	4000
4 M. Bark "Schiffbek"	"	3950
4 M. Bark "Eilbek"	"	3900
4 M. Bark "Isebek"	"	3800
4 M. Bark "Wandsbek"	"	3750
4 M. Bark "Barmbek"	"	3350
Vollschiff "Lasbek"	"	3850
Vollschiff "Steinbek"	"	3700
Vollschiff "Schwarzenbek"	"	3300
Vollschiff "Flottbek"	"	3100
Vollschiff "Tarpenbek"	"	3000
Barkschiff "Ellerbek"	"	2550
Barkschiff "Osterbek"	"	2550

Hamburg 11, den 16th April, 1912.

Neptunhaus.

Messrs. ANDROS & HENGSTLER,

624 Kohl Building,

San Francisco, Cal.

Dear Sirs:

"SCHWARZENBEK." We duly received your favour of the 7th February, regarding the lawsuit of the "Schwarzenbek" against W. R. Grace & Co., of your city, for demurrage and are very sorry to hear that it will be some time before this matter can be settled on account of the bad state of your Courts.

We cannot understand how such a state is possible and should think a change would be made if addressing a petition to the competent authorities.

Awaiting your further early good news on the subject,

Yours faithfully,
p. p. KNOHR & BURCHARD, Nfl.
A. ZIMMER.

(Copist)

[Endorsed]: Filed June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [176]

(Respondent's Exhibit "A.")

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Order #410 "Schwarzenbek."

New Westminster, B. C.,

April 27th, 1907.

Rec'd May 1, 1907.

Ans'd File

Ex F.

Messrs. BARTLETT & CO.,
Seattle, Wn.

Gementlemen:

Captain Rennie informed Mr. Fowle this morning over the Phone that he would begin work loading "Schwarzenbek" again on next Monday morning. They may put on a "Scab" crew of longshoremen.

No work has been done this week, and the Mill Co. has on Dock not less than 325 M feet of lumber. If we get started on Monday morning should complete loading about May 11th.

Very truly,
H. D. HYLTON. [177]

210

Martin H. A. Elvers et al. vs.

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Order #410 "Schwarzenbek."

New Westminster, B. C., April 30th, 1907.

Messrs. W. R. Grace & Co.,

San Francisco, Cal.

Gentlemen:

We began loading yesterday afternoon and the Stevedore is using the Ships Crew and do not think they are going to be able to handle more than about 45 M ft. per day. The strike of Longshoremen is still on. The manufacture of lumber is only fairly good but on the whole it is well above grade ordinarily shipped.

Very respectfully,

H. D. HYLTON. [178]

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Millside, B. C., May 4th, 1907.

Messrs. Bartlett & Co.,

Seattle, Wash.

Gentlemen:

Monday afternoon next will want to begin taking in short lengths 1x6 select for Beam Filling between Decks and the Ship may want 20 or 30 M feet more. The short lengths are scarce in balance of cargo as they came pretty thick at first. Have 1260 M feet

loaded this P. M. and should finish about the 4th inst.

Yours respectfully,

H. D. HYLTON. [179]

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Order \$410 "Schwarzenbek."

Millside, B. C., May 4th, 1907.

Messrs. W. R. Grace & Co.,

San Francisco, Cal.

Gentlemen:

I do not think that the ship will carry as much as was previously reported as the Ships' Crew are not doing a very good job of stowing cargo—however, she should carry at least the 1650 ~~M~~ feet total. The strike is still on and Stevedore has not been able to get competent men to replace the old crew. Lumber is good—am getting fine cargo.

Very truly,

H. D. HYLTON. [180]

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Order #410 "Schwarzenbek."

Millside, B. C., May 9th, 1907.

Messrs. Bartlett & Co.,

Seattle, Wash.

Gentlemen:

Yesterday being a German holiday, we did not work and are not working to-day as Captain has stopped work of loading until an experienced crew is

furnished by Stevedore. She will carry some less than 1650 ~~M~~ feet. Will advise you as soon as we get started again. About 1400 ~~M~~ feet loaded.

Very truly,

H. D. HYLTON.

Please forward to Messrs. W. R. G. & Co.

H. [181]

Phone 188.

P. O. Box 573.

THE WINDSOR,

P. O. Bilodeau, Proprietor.

Order #410 "Schwarzenbek."

Millside, B. C., May 11th, 1907.

Rec'd May 17, 1907.

Ans'd.

Messrs. Bartlett & Co.,

Seattle, Wn.

Gentlemen:

The strike is settled and we have been working to-day and are going to put in all the time possible until ship is finished loading. Expect to finish on the 14th (next Tuesday).

Respectfully,

H. D. HYLTON. [182]

Order #410.

Seattle, Wash., May 16th, 1907.

Messrs. W. R. Grace & Co.,

San Francisco, Cala.

Gentlemen:

Completed loading ship "Schwarzenbek" yesterday at 3:30 P. M. with lumber furnished by the Frazer River Saw Mill Co. Ltd. of Millside, B. C.

The cargo consists of about 1600 M ft. total, of which there is 216 M ft. of 1x6 select, 132 M ft. of 1 $\frac{1}{2}$ x6 and 1252 M ft. of Merchantable.

The 1x6 select runs 75% clear about one-half of which is vertical grain; the 1 $\frac{1}{2}$ x6 runs about the same % of clear and 10% vertical. In sizes under 4x4 in Merchantable lot there is an average of 20% clear; sizes 4x4 and up there is a fair % of clear and select. The manufacture of both select and merch. is only fair and lumber rejected was mostly on account of poor manufacture. Taking the whole cargo it is the best that I have shipped or seen shipped to the west coast for several years. The stowing of a part of cargo by ship's crew resulted in a loss of space amounting to nearly, if not quite 75 M feet.

Very respectfully,

H. D. HYLTON.

[Endorsed]: Filed June 9, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [183]

(Respondent's Exhibit "B.")

By this Public Instrument hereinafter contained be it known and made manifest to all people that on the sixteenth day of May, in the year of our Lord one thousand nine hundred and seven personally appeared and presented himself before me, CHARLES GARDINER JOHNSON, a Notary Public in and for the Province of British Columbia, Frederick Flindt, Commander of the Sailing Ship "SCHWARZENBEK," belonging to Hamburg, Germany, Fritz Unruh, Chief Office also of the same vessel, and

Wilhelm Kreyenhop, Sailmaker, also of the same vessel, who severally, duly and solemnly declare and state as follows:

THAT IS TO SAY,

That these appearers and the rest of the crew of the said vessel set sail from San Rosalia, Cal., for Royal Roads, British Columbia, in Ballast.

The vessel being then tight, staunch and strong, well-manned, victualled and sound, and in every respect fit to perform her said intended voyage.

On Tuesday, the 29th day of January last past, when the hour of nine o'clock in the morning tow-boat came alongside, vessel cast off from wharf, hove up port anchor, which was down, and proceeded; tow boat letting go hawser about 11 A. M. same date, and vessel continued voyage under sail, weather being favorable and all sail made.

Weather was now fine, with smooth set, and Rounds were now being regularly made and reported, Lookouts kept, and regulation light exhibits from sunset to sunrise.

An uneventful voyage was made from this date 29th January, vessel experiencing calsm, light winds, etc., until Saturday 1st day of March, last past, when at the hour of 7 o'clock P. M. vessel [184] made Flattery Light and stood in for entrance of Straits of San Juan, but wind being easterly and vessel beating, Callam Bay was not made until 7 A. M. of 2d of March. At that hour tug "Behada" spoke vessel, which was taken in tow and proceeded to Royal Roads where anchor was dropped at 5 P. M. 2d March.

Awaiting orders and discharging ballast vessel lay in Roads until 10th Marcy, 1907, when at the hour of midnight Tug "Lorne" same alongside, made fast and vessel proceeded to tow to Millside, Fraser River, having received orders from W. R. Grace & Co., San Francisco, the ship's charterers, by telegram to do so.

At 2 o'clock P. M. of March 11th vessel arrived at the wharf of The Fraser River Saw Mill, Ltd., and made fast, and having on the 13th day of March, 1907, discharged all ballast, and being prepared to receive cargo Captain notified Mill in writing that he was ready, he having fulfilled all conditions of Charter Party and also as per Charter Party supplied Mill with written Surveyor's certificate. This notice having been refused by the mill on the ground that ship was not ready Captain made note of same in his Log-Book, and went to Vancouver to interview charterers' stevedores, mentioned in Charter Party.

On Thursday March 21st, the Mill having accepted notice from Master that he was ready to receive cargo, vessel began loading, having on that date notified Mill that when cargo first came on board seven (7) of his lay days had expired; see Captain's letter book for copy.

Loading of vessel now proceeded until Friday 19th day of April, when vessel's lay days having run out Captain served written notice on Mill Manager and also telegraphed Grace & Co., Charterers, that his lay days had now expired, and that he was on demurrage. [185]

Loading continued until Wednesday 15th day of May, when at about noon vessel was loaded, having on board roughly 1,600,000 ft. B. M. of Lumber; and on that date and time Captain had a claim for demurrage amounting to £610/0/6, or \$2,964.72 at exch. \$4.86, which he served on Mill Manager at loading berth, as well as posting copy of registered letter to W. R. Grace & Co., Charterers, San Francisco. Charterers were also telegraphed to by Captain to the effect that he would only sign Bills of Lading under protest, until his claim for demurrage was paid or acknowledged in writint, it having been refused.

This appearer declares that on the 20th day of April, 1907, he appeared at the office of CHARLES GARDINER JOHNSON, the Notary Public, and causes his Protest to be duly noted.

Wherefore the said appearers on behalf of the owners of the said vessel and on behalf of themselves as Master, Mate and Sailmaker, do protest, and I the said Notary at their request do also protest against the said Charterers, and against their agents, and against all and every other person or persons whosoever responsible, or liable, or whom these presents do, shall or may concern, and holding them responsible and liable for the breach of said Charter Party and for all demurrage, damage, injury, loss, wages, costs and expenses incurred, owing or sustained or to be incurred or sustained by reason of the said *brach*, delay, detention, or other premises, and will

sign Bills of Lading only under Protest as herein mentioned.

FRIEDRICH FLINDT, Master.

[Seal]

FR. UNRUH, Chief Officer.

W. KREYENHOP, Sailmaker.

THUS DECLARED AND PROTESTED in due form of law at the office of me, the *daid* Notary, at Vancouver, B. C., the day and year first above written.

C. GARDINER JOHNSON,
Notary Public.

[Endorsed]: Filed June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [186]

(Respondent's Exhibit "C.")

Rec'd Nov. 20, 1908.

Ans'd.

Ship "Schwarzenbek,"

Millside, May 21st, 1907.

Rec'd May 25, 1907.

Ans'd.

Ex.

Messrs. W. R. Grace & Co.,
San Francisco, Cal.

Dear Sirs:—

Under instructions from my owners I am to-day ready to sign Bills of Lading as you request, but only do so under Protest as I claim demurrage amounting to \$2,984.72, which you have declined to pay me or to settle with me about.

Herewith is a copy of Protest which I have made before a Notary for the reason that you have pre-

vented my signing Bills of Lading under protest.

I am,

Yours very truly,

FRIEDRICH FLINDT,

Master Ship "Schwarzenbek." [187]

Rec'd Nov. 20, 1908.

Ans'd.

May 21st, 1907.

Capt. Flindt,

Master "Schwarzenbek,"

In Stream, New Westminster, B. C.

My dear Captain:—

I was very much surprised to receive your protest, addressed to the Fraser River Sawmills, Limited, for a great many reasons, a few of which I will enumerate to you right now. In the first place you have erred in your statement as to when your lay days commenced. This we can prove to you from the date of your notice in your own handwriting. You fully understand that, where a strike occurs during the loading of a vessel, before the Vessel's lay days are up, the lay days during the lift of a strike cannot be counted against the Mill Company; further, you are aware of the fact that never during the time you were laying at our wharf were you out of lumber; the closest to it was when there was but 15000 ft. of regular cargo, and some 40,000 ft. of short-stowage ordered by you. Now, before a vessel can claim any demurrage, she must clean up the wharf day by day; according to the laws in such cases, a vessel does not have the privilege of leaving lumber on the wharf for several days, and then putting it all in in one day,

but, she must clean up the wharf each day, completely. Of course, in the case of short-stowage called for by you, this would not be expected, and was not by us, for the short stowage is to be used all thru the stowing of the cargo. As you, yourself, have said to me a number of times that you *new* you had no claim against the Mill Co. for demurrage, and your mate has made the same assertion to several of our mill men, it does seem rather strange to me that you should [188] have filed your protest

May 21/07.

Capt. Flindt,

Master "Schwarzenbek," in Stream,

New Westminster, B. C.

against *us*, when you knew, and so did Mr. Gardner Johnson well knew, that the protest was not worth his fees, and the paper it was written upon. We have a great deal of evidence that we might further state at this time, but it is not worth our while, for we are of the firm belief that you have done this, simply because you were told to do it, and could not use your own judgment in the matter at this time. There is no law in Canada, United States, nor Great Britain that could, or would, collect one cent from us, under the circumstances.

We trust that nothing further will come of this, as it will just mean the waste of good money for both your owners, and others interested.

Yours very truly,

FRASER RIVER SAYMILLS Limited,

W. P. FOWLE,

Manager.

WPF-J.

Fraser River Sawmills Lt.,

Millside, B. C.

Gentlemen:—This is an exact copy of letter received from you by me—on May 21st. Stm't. correct—

F. FLINDT.

J. W. BRITTON, Jr.,

Witness. 5/25/07. [189]

On this twentieth day of April in the year of our Lord one thousand nine hundred and seven personally appeared and presented himself at this office of CHARLES GARDINER JOHNSON, Notary Public in and for the Province of British Columbia, Frederick Flindt, Master of the Sailing Ship "Schwarzenbek," which sailed on a voyage from San Rosalia, Cal. via. Royal Roads, British Columbia, for orders on the twenty-ninth day of January from San Rosalia, and on the tenth day of March from Royal Roads for the Port of New Westminster, British Columbia, which was reached on Monday, the 11th March, at —— o'clock — M.

And the said master hereby gives notice of his intention of protesting, and causes this note of minute to be made of all and singular the premises to be entered in this Register. His vessel having been detained over and above her lay days as set forth in Charter Party; and further protests against signing Bills of Lading as he has not been paid demurrage from day to day from and including Saturday the 20th day of April, 1907, up to and including Wednesday the 15th day of May, 1907; see attached Marked

“A” in red ink, and Extended Protest.

Sgd. F. FLINDT,
Master S. “Schwarzenbek.”

[Seal]

Sgd. C. GARDINER JOHNSON,
Notary Public.

I, Charles Gardiner Johnson, hereby certify the foregoing to be a true and correct copy of the original Note of Protest, which is now on file in my office.

[Seal] C. GARDINER JOHNSON,
Notary Public. [190]

“A”

CGJ.

N.P.

German Ship “Schwarzenbek,”
New Westminster, B. C.

Messrs. W. R. Grace & Co.,
San Francisco, Cal.

(Charterers German Ship “Schwarzenbek.”)

To German Ship “Schwarzenbek” & Owners.

To demurrage on vessel from 20th day of

April, 1907, to 15th day of May, 1907

Inclusive, 26 days @ 3d per registered tonnage per day (1877 tons)=

£610:0:6 @ exch. \$4.86=\$2,964.72

Dated at New Westminster, B. C., 17th May, 1907.

F. FLINDT,

“A”

Master.

F. UNRUH.

W. KREYENHOP.

[Endorsed]: Filed, June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [191]

(Respondent's Exhibit "D.")

April 2d, 1907.

Capt. F. Flindt,

Master "Schwarzenbek,"

Millside, B. C.

My dear Sir:—

I am in receipt of yours dated April 1st, and note your complaint as to your quarrel with the stevedores and charterers. This is nothing to us. We are cutting the lumber as per instructions from Messrs. W. R. Grace & Co., and have no authority from them to change the lengths to suit your convenience. Of course, you understand that, so long as the ship is alongside the Dock, and not loading, during this controversy, the lay-days are against you, and will not be taken into consideration when counting same. These troubles you must fix up with Grace & Company's Agent, who informed us yesterday they had telegraphed to you regarding same.

Yours very truly,

FRASER RIVER SAWMILLS, LIMITED,

By W. P. FOWLE,

Manager.

WPF—J.

This is Exhibit "A" referred to in the affidavit of William P. Fowle, sworn before me this 10th day of June, 1907.

A. J. BOWERS,

A Notary Public within British Columbia.

[Endorsed]: Filed, June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [192]

(Respondent's Exhibit "E")

A.

Ship "Schwarzenbek,"

Vancouver, B. C., March 19th, 1907.

Capt. C. W. Rennie,

Vancouver.

Dear Sir:—

With reference to the stevedoring of my vessel—
Under clause 68 of her Charter Party it reads that the
cargo is to be stowed under the master's supervision
and direction, charterers stevedore to be employed
not exceeding \$1.10. On my arrival at Millside I
notified charterers, Messrs. W. R. Grace & Co., of
San Francisco, who advised me that Bartlett of Port
Townsend, would stevedore as per Charter. I wired
this gentleman, who in turn wired me, under date
15th inst. that you would load ship for him. Up to
the time of writing nothing has been done towards
stevedoring my vessel; I have been at my loading
berth ready to receive cargo since the 12th inst. and
I shall be obliged if you will advise me by return
whether you intend to stevedore the vessel; if so,
please stated date on which you intend to start work;
if not, I shall have to make other arrangements
charging the charterers with all expenses I may have
to go to.

Please give messenger reply to this by return, and oblige

Yours very truly,
Sgd. F. FLINDT,
Master.

For true copy.

KNOHR & BURCHAR, Nfg.
3794/08.

[Endorsed]: Filed June 9, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [193]

*In the District Court of the United States, for the
Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

Order Concerning Exhibits in District Court.

It appearing to the Court that libelants' exhibit one in the above-entitled case consists of a map or chart, and that libelants' exhibit seven consists of two documents written in the Spanish language,

NOW, THEREFORE, IT IS HEREBY ORDERED that said libelants' exhibit one may be filed in its original form in the Circuit Court of Appeals by the clerk of the District Court, and that said documents constituting libelants' exhibit seven shall

be translated from the Spanish language into the English language by Jose de Rocco, and such translations, together with the originals of said documents, may be filed in the Circuit Court of Appeals by the clerk of the District Court.

Dated: San Francisco, California, February 14, 1916.

M. T. DOOLING,
Judge of said Court.

[Endorsed]: Filed Feb. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [194]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Order Extending Time [to December 13, 1915, for
Preparation of Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR, IT
IS HEREBY ORDERED:

That the appellants herein have to and including the 13th day of December, 1915, within which time to procure to be filed the apostles on appeal certified by the clerk of the District Court, and that the clerk of the District Court have to and including said day

within which time to certify such apostles.

Dated: November 12, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed, Nov. 12, 1915. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [195]

*In the District Court of the United States, for the
the Northern District of California.*

No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Order Extending Time [to January 14, 1916], for
Preparation of Apostles on Appeal,**

Good cause appearing therefor, it is hereby ordered that the time within which the appellants and the clerk of the above-entitled court are to file the apostles on appeal herein, in the Circuit Court of Appeals, be, and the same is extended to and including the 14th day of January, 1916.

Dated: San Francisco, California, December 14, 1915.

M. T. DOOLING,
Judge of said Court.

[Endorsed]: Filed Dec. 14, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [196]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Order Extending Time [to February 14, 1916] for
Preparation of Apostles on Appeal.**

GOOD CAUSE APPEARING THEREFOR, IT
IS HEREBY ORDERED:

That the appellants herein have to and including
the 14th day of February, 1916, within which time to
procure to be filed the apostles on appeal certified by
the clerk of the District Court, and that the clerk
of the District Court have to and including said day
within which time to certify such apostles.

Dated: January 11, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Filed, Jan. 11, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [197]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 13,980.

MARTIN H. A. ELVERS and FREDERICK A. E.
ZIMMER,

Libelants,

vs.

W. R. GRACE & CO., a Corporation,

Respondent.

**Order Extending Time [to February 24, 1916] for
Preparation of Apostles on Appeal.**

Good cause appearing therefor, IT IS HEREBY ORDERED; That the appellants herein have to and including the 24th day of February, 1916, within which time to procure to be filed the apostles on appeal certified by the clerk of the District Court, and that the clerk of the District Court have to and including said day within which time to certify such apostles.

Dated, February 14th, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 14, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [198]

**Certificate of Clerk, United States District Court,
to Apostles on Appeal.**

I, Walter B. Maling, Clerk of the District Court of
the United States of America for the Northern Dis-

trict of California, do hereby certify that the foregoing 198 pages, numbered from 1 to 198, inclusive, contain a full true and correct transcript of certain records and proceedings, in the case of Martin H. A. Elvers et al., vs. W. R. Grace & Company, a corporation, No. 13,980, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Praeceptum for Apostles on Appeal" (copy of which is embodied in this transcript), and the instructions of Golden W. Bell, Esquire, Attorney for Libelants and Appellants herein. Libelants' Exhibits "1" and "7" are transmitted herewith, in their original form, in accordance with order of this Court, dated February 14th, 1916.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Eighty-seven Dollars and Ten Cents (\$87.10) and that the same has been paid to me by the attorneys for the appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of February, 1916.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

TMC.

[Ten Cent Internal Revenue Stamp. Canceled
2/24/16. C. W. C.] [199]

[Endorsed]: No. 2750. United States Circuit Court of Appeals for the Ninth Circuit. Martin H. A. Elvers and Frederick A. E. Zimmer, Appellants, vs. W. R. Grace & Company, a Corporation, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed February 24, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**Certificate of Clerk, U. S. District Court, as to
Original Exhibits.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the annexed exhibits, Two (2) in number, being marked:

Libelants' Exhibit "1" (Chart or map),

Libelants' Exhibit "7" (Powers of attorney),
are original exhibits, introduced and filed in the case of Martin H. A. Elvers et al. vs. W. R. Grace & Company, a Corp., No. 13980, and are herewith transmitted to the Circuit Court of Appeals for the Ninth Circuit, as per order of this Court, a copy of which is embodied in the apostles on appeal herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 24th day of February, A. D. 1916.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

CMT

[Ten Cent Internal Revenue Stamp. Canceled 2/24/16. C. W. C.]

[Endorsed]: No. 2750. United States Circuit Court of Appeals for the Ninth Circuit. Certificate of Clerk, U. S. District Court Re Exhibits. Filed Feb. 24, 1916. F. D. Monekton, Clerk.

